

FILED
U.S. DISTRICT COURT

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DISTRICT OF UTAH
**OFFICE OF
JUDGE TENA CAMPBELL**

GARY L. JOHNSON [4353]
MARTHA KNUDSON [8512]
RICHARDS, BRANDT, MILLER & NELSON

BY: _____
DEPUTY CLERK

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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

Pacific Frontier, Inc., a Nevada Corporation,
J & L Distributing, a Nevada Corporation,
Redwood Division Pro Club 100%, Inc., a
California Corporation and individuals
Benjamin G. Lansford, Anthony Dye,
Benjamin H. Memmott, Courtney Hoss,
Joshua L. Felix, Shawn L. Hoagland,
Pedro Silvaz Jr., William C. Franklin,
Parham Rezacipour, Eric W. Morgan,
Matthew A. Piehl, Chase Deschamp, and
Chad E. Smuin.

Plaintiffs,

vs.

Kaysville City, a municipal corporation, Brian D.
Cook, in his official capacity as Mayor of
Kaysville City, David Helquist, in his official
capacity as Police Chief of Kaysville City,
John Thacker, in his official capacity as Kaysville
City Manager, Reed Nelson, Neka Roundy,
Christopher Snell, John McCleary, and
Nathan Pace, in their official capacities as
members of the Kaysville City Council, and
Darrell Horne and Stephen Whitesides, in their
official capacities as former members of the
Kaysville City Council.

Defendants.

**ORDER GRANTING CONSENT
DECREE**

Civil No. 1:02CV00129

Judge Tena Campbell
Magistrate Judge Samuel Alba

Plaintiffs, by and through their counsel of record, and defendants, by and through their counsel of record, with the encouragement of the Court, have entered into settlement negotiations to resolve the outstanding disputes. During the course of the settlement negotiations, the parties agreed that Kaysville City would adopt an agreed-upon, facially valid, Model Ordinance (attached as Exhibit A to this Order) which addresses the First and Fourteenth Amendment protections afforded door-to-door solicitors.

This Court has reviewed the Joint Motion of the parties to enter this Order, the Court has reviewed the Model Ordinance and the Settlement Agreement (which is attached as Exhibit B to this Order) and determines that the provisions of the Consent Decree, Model Ordinance and Settlement Agreement do not facially violate the requirements of the First and Fourteenth Amendments to the United States Constitution, and that they are not contrary to the public interest. Based upon this determination, the Court enters the following Order:

1. Kaysville City and the named individuals in the Third Amended Complaint are currently under an injunction not to enforce the City's current solicitation ordinances and rules and administrative procedures related thereto. That injunction is dissolved upon Kaysville's adoption of the Model Ordinance described below, which shall occur not later than six (6) months following the entry of this Consent Decree.

2. The City also shall notify all staff to inform any person or entity seeking information regarding door-to-door solicitation in the City that the City's current solicitation

ordinances are not being enforced and will be repealed when the City has adopted the Model Ordinance attached hereto as Exhibit A;

3. The City shall, within six (6) months of the entry of this Order, adopt as its solicitation ordinance the Model Ordinance attached as Exhibit A;

4. The City shall not charge for any purpose or reason associated with the licensing process any individual door-to-door solicitor more than \$15 per year for at least one year from the date of the adoption of the Model Ordinance;

5. The present City Council shall not repeal, amend, or modify the Model Ordinance or enact any other ordinance, rule, or administrative procedure that would have the effect of (1) imposing on Plaintiffs greater requirements than those imposed by the Model Ordinance, or (2) denying Plaintiffs any of the benefits afforded to the Plaintiffs by that Model Ordinance.

6. In the event any party to this Order is required to seek judicial enforcement of the same against another named party, the prevailing party shall be awarded, in addition to any other relief obtained, its reasonable costs and attorney fees incurred in such action as provided by 42 U.S.C. § 1988.

7. Any party to this Order, or person or entity whose rights or responsibilities are subject to the requirements of this Order, may seek modification of this Order by any recognized procedure, including the provisions of Rule 60(b)(5) Fed.R.Civ.P., if future events or changes in applicable law indicate any facial portion of this Order including the Model Ordinance (or their application to any person advocating or soliciting in any applicable city, town

or municipality), conflicts with applicable federal law including the provisions of Rule 60(b)(5)
Fed.R.Civ.P.

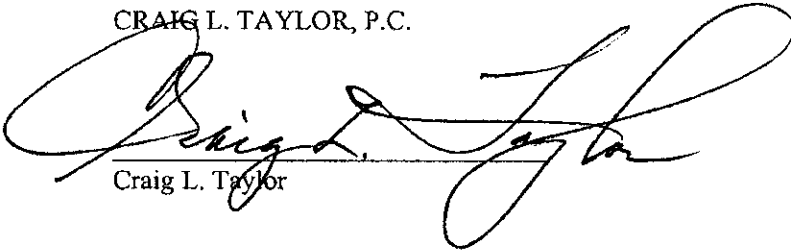
DATED this 5 day of Sept, 2006.

BY THE COURT:

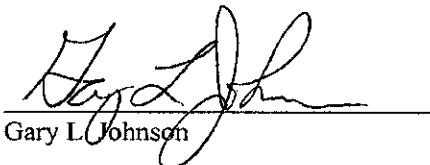

Honorable Tena Campbell
U.S. District Court Judgment

APPROVED AS TO FORM:

CRAIG L. TAYLOR, P.C.


Craig L. Taylor

RICHARDS, BRANDT, MILLER & NELSON


Gary L. Johnson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of ~~August~~ ^{September}, 2006, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Craig L. Taylor
Matthew Hilton
James E. Merrill
Charles R. Ahlstrom
CRAIG L. TAYLOR, P.C.
472 North Main Street
Kaysville, UT 84037

Attorneys for Plaintiffs

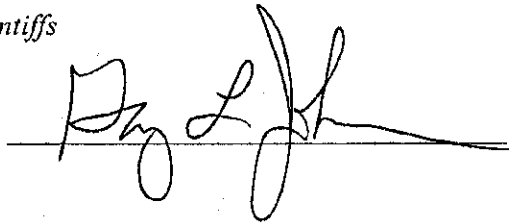
A handwritten signature in black ink, appearing to read "Craig L. Taylor", is written over a horizontal line.

Exhibit “A”

MODEL SOLICITATION ORDINANCE

CHAPTER ____ RESIDENTIAL SOLICITATION

000-001	Purpose
000-002	No Other City License or Approval Required
000-003	Definitions
000-004	Exemptions from Chapter
000-005	Solicitation Prohibited
000-006	Registration of Solicitors
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000-017	"No Soliciting" Notice
000-018	Duties of Solicitors
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000-001 Purpose.

Residents of the City have an inalienable interest in their personal safety, well-being, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce. The City has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect citizens from unwanted intrusions upon residential property. The City also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity.

There must be a balance between these substantial interests of the City and its citizens, and the effect of the regulations in this Chapter on the rights of those who are regulated. Based on the collective experiences of City officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding Door-to-Door Solicitation, the experience of its law enforcement officers and those affected by Door-to-Door canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in Door-

to-Door Solicitation, the City adopts this Chapter to promote the City's substantial interests in:

- (1) respecting citizen's decisions regarding privacy in their residences;
- (2) protecting persons from criminal conduct;
- (3) providing equal opportunity to Advocate for and against Religious Belief, Political Position, or Charitable Activities; and
- (4) permitting truthful and non-misleading Door-to-Door Solicitation regarding lawful Goods or Services in intrastate or interstate commerce.

The City finds that the procedures, rules and regulations set forth in this Chapter are narrowly tailored to preserve and protect the City interests referred to herein while at the same time balancing the rights of those regulated.

000-002 No Other City License or Approval Required.

- (1) Registered Solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in Door-to-Door Solicitation.
- (2) Any Business licensed by the City under another City Ordinance that uses employees, independent contractors, or agents for Door-to-Door Solicitation in an effort to provide any tangible or intangible benefit to the Business, shall be required to have such Solicitors obtain a Certificate, unless otherwise exempt from Registration.
- (3) Those Responsible Persons or Entities associated with Registered Solicitors need not apply for, nor obtain, any other license, permit, or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
- (4) Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local government law regarding any license, permit, or certificate that a Registered Solicitor is otherwise required to have or maintain.

000-003 Definitions. For the purposes of this Chapter, the following definitions shall apply:

- (1) **"Advocating"** means speech or conduct intended to inform, promote, or support Religious Belief, Political Position, or Charitable Activities.
- (2) **"Appeals Officer"** means the City Council or designee of the City responsible for receiving the information from the City and Appellant regarding the denial or suspension of a Certificate and issuing a decision as required by this Chapter.
- (3) **"Appellant"** means the person or entity appealing the denial or suspension of a Certificate, either personally as an Applicant or registered Solicitor, or on behalf of the Applicant or Registered Solicitor.

(4) **"Applicant"** means an individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a Certificate permitting Door-to-Door Solicitation.

(5) **"Application Form"** means a standardized form provided by the City to an Applicant to be completed and submitted as part of Registration.

(6) **"B.C.I."** means an original or copy, dated no older than 180 days prior to the date of the Application, of either: (1) a Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the Applicant; or (2) verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a Disqualifying Status exists for the Applicant.

(7) **"Business"** means a commercial enterprise licensed by the City as a person or Entity under this Title, having a fixed or temporary physical location within the City.

(8) **"Certificate"** means a temporary, annual, or renewal Certificate permitting Door-to-Door Solicitation in the City applied for or issued pursuant to the terms of this Chapter.

(9) **"Charitable Activities"** means Advocating by persons or Entities that either are, or support, a Charitable Organization.

(10) **"Charitable Organization"** includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other Entity:

A. that is:

- (i) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;
- (ii) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or
- (iii) established for any charitable purpose; and

B. That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.

C. Charitable Organization includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state for a Charitable Organization that has its principal place of business outside the City or State of Utah.¹

¹Charitable Solicitation Act UCA § 13-22-2(1)(a) & (b).

(11) **"Competent Individual"** means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.

(12) **"Completed Application"** means a fully completed Application Form, a B.C.I., two copies of the original identification relied on by the Applicant to establish Proof of Identity, and the tendering of Fees.

(13) **"Criminally Convicted"** means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the Applicant or Registered Solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.

(14) **"Disqualifying Status"** means anything specifically defined in this Chapter as requiring the denial or suspension of a Certificate, and any of the following:

- A. The Applicant or Registered Solicitor has been Criminally Convicted of:
(i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
- B. Criminal charges currently pending against the Applicant or Registered Solicitor for: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
- C. The Applicant or Registered Solicitor has been Criminally Convicted of a felony within the last ten (10) years;
- D. The Applicant or Registered Solicitor has been incarcerated in a federal or state prison within the past five (5) years;
- E. The Applicant or Registered Solicitor has been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.
- F. A Final Civil Judgment been entered against the Applicant or Registered Solicitor within the last five (5) years indicating that: (i) the Applicant or Registered Solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or Registered Solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19);

- G. The Applicant or Registered Solicitor currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
- H. The Applicant or Registered Solicitor has an outstanding arrest warrant from any jurisdiction; or
- I. The Applicant or Registered Solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

(15) **"Door to Door Solicitation"** means the practice of engaging in or attempting to engage in conversation with any person at a Residence, whether or not that person is a Competent Individual, while making or seeking to make or facilitate a Home Solicitation Sale, or attempting to further the sale of Goods and or Services.

(16) **"Entity"** includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

(17) **"Fees"** means the cost charged to the Applicant or Registered Solicitor for the issuance of a Certificate and/or Identification Badge, which shall not exceed the reasonable costs of processing the application and issuing the Certificate and/or Identification Badge.

(18) **"Final Civil Judgment"** means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

(19) **"Goods"** means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

(20) **"Home Solicitation Sale"** means to make or attempt to make a Sale of Goods or Services by a Solicitor at a Residence by means of Door-to-Door Solicitation, regardless of

- A. the means of payment or consideration used for the purchase;
- B. the time of delivery of the Goods or Services; or
- C. the previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

(21) **"Licensing Officer"** means the City employee(s) or agent(s) responsible for receiving from an Applicant or Registered Solicitor the Completed Application and either granting, suspending, or denying the Applicant's Certificate.

(22) **"No Solicitation Sign"** means a reasonably visible and legible sign that states "No Soliciting," "No Solicitors," "No Salespersons," "No Trespassing," or words of similar import.

(23) **"Political Position"** means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

(24) **"Registered Solicitor"** means any person who has been issued a current Certificate by the City.

(25) **"Registration"** means the process used by the City Licensing Officer to accept a Completed Application and determine whether or not a Certificate will be denied, granted, or suspended.

(26) **"Religious Belief"** means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

(27) **"Residence"** means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street or public rights of way.

(28) **"Responsible Person or Entity"** means that person or Entity responsible to provide the following to an Applicant, Registered Solicitor, and the Competent Individual in a Residence to whom a Sale of Goods or Services is made or attempted to be made by means of a Home Solicitation Sale:

- A. maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any Sale of Goods or Services, paying the sales taxes, and filing any required returns or reports;
- B. facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and
- C. refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

(29) **"Sale of Goods or Services"** means the conduct and agreement of a Solicitor and the Competent Individual in a Residence regarding a particular Good(s) or Service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.

(30) **"Services"** means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.

(31) **"Soliciting"** or **"Solicit"** or **"Solicitation"** means any of the following activities:

- A. Seeking to obtain Sales or orders for the exchange of goods, wares,

merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;

- B. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
- C. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or Entity;
- D. Seeking to obtain orders or prospective customers for Goods or Services.
- E. Seeking to engage an individual in conversation at a Residence for the purpose of promoting or facilitating the receipt of information regarding Religious Belief, Political Position, Charitable Conduct, or a Home Solicitation Sale.
- F. Other activities falling within the commonly accepted definition of Soliciting, such as hawking or peddling.

(32) **"Solicitor" or "Solicitors"** means a person(s) engaged in Door-to-Door Solicitation.

(33) **"Submitted in Writing"** means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

(34) **"Substantiated Report"** means an oral, written, or electronic report:

- A. That is submitted to and documented by the City;
- B. By any of the following:
 - 1. A Competent Individual who is willing to provide law enforcement or other City employees with publicly available identification of their name, address, and any other reliable means of contact;
 - 2. City law enforcement or Licensing Officer; or
 - 3. Any other regularly established law enforcement agency at any level of government;
- C. That provides any of the following information regarding a Registered Solicitor:

1. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;
2. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not yet been determined to be a Disqualifying Status;
3. Documented, eye-witness accounts that the Registered Solicitor has engaged in repeated patterns of behavior that demonstrates failure by the Registered Solicitor to adhere to the requirements of this Chapter; or
4. Probable cause that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.

(35) **“Waiver”** means the written form provided to Applicant by the City wherein Applicant agrees that the City may obtain a name/date of birth BCI background check on the Applicant for licensing purposes under this Chapter, and which contains Applicant’s notarized signature.

000-004 Exemptions From Chapter. The following are exempt from Registration under this Chapter:

(1) Persons specifically invited to a Residence by a Competent Individual prior to the time of the person’s arrival at the Residence;

(2) Persons whose license, permit, certificate or registration with the State of Utah permits them to engage in Door to Door Solicitation to offer Goods or Services to an occupant of the Residence;

(3) Persons delivering Goods to a Residence pursuant to a previously made order, or persons providing Services at a Residence pursuant to a previously made request by a Competent Individual;

(4) Persons advocating or disseminating information for, against, or in conjunction with, any Religious Belief, or Political Position regardless of whether Goods, Services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and

(5) Persons representing a Charitable Organization. The charitable exemption shall apply to students Soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the Solicitation has been approved in writing by the school administration, and that such student Solicitors carry current picture student identification from the educational institution for which they are Soliciting.

Those Persons exempt from Registration are not exempt from the duties and prohibitions outlined in Sections 000-017, 000-018 and 000-019 while Advocating or Soliciting.

000-005 Solicitation Prohibited. Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private Residence within the City by Solicitors, for the purpose of Home Solicitation Sales or to provide Goods or Services, is prohibited and is punishable as set forth in this Chapter.

000-006 Registration of Solicitors. Unless otherwise exempt under this Chapter, all persons desiring to engage in Door-to-Door Solicitation within the City, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.

000-007 Application Form. The Licensing Officer shall provide a standard Application Form for use for the Registration of Solicitors. Upon request to the Licensing Officer, or as otherwise provided, any person or Entity may obtain in person, by mail, or facsimile, a copy of this Application Form. Each Application Form shall require disclosure and reporting by the Applicant of the following information, documentation, and fee:

(1) **Review of Written Disclosures.** An affirmation that the Applicant has received and reviewed the disclosure information required by this Chapter.

(2) **Contact Information.**

- A. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;
- B. Applicant's telephone number, home address and mailing address, if different;
- C. If different from the Applicant, the name, address, and telephone number of the Responsible Person or Entity; and
- D. The address by which all notices to the Applicant required under this Chapter are to be sent.

(3) **Proof of Identity.** An in-person verification by the Licensing Officer of the Applicant's true identity by use of any of the following which bear a photograph of said Applicant:

- A. A valid drivers license issued by any State;
- B. A valid passport issued by the United States;
- C. A valid identification card issued by any State;

D. A valid identification issued by a branch of the United States military.

Upon verification of identity, the original identification submitted to establish Proof of Identity shall be returned to the Applicant.

(4) **Proof of Registration with Department of Commerce.** The Applicant shall provide proof that either the Applicant, or the Responsible Person or Entity, has registered with the Utah State Department of Commerce;

(5) **Special Events Sales Tax Number.** The Applicant shall provide a special events sales tax number for either the Applicant, or for the Responsible Person or Entity for which the Applicant will be soliciting;

(6) **Marketing Information.**

- A. The Goods or Services offered by the Applicant, including any commonly known, registered or trademarked names;
- B. Whether the Applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered Goods or Services.

(7) **BCI Background Check.** The Applicant shall provide:

- A. An original or a copy of a BCI background check as defined in 000-003; and
- B. A signed copy of a Waiver whereby Applicant agrees to allow the City to obtain a name/date of birth BCI background check on Applicant for purposes of enforcement of this Chapter.²

(8) **Responses to Questions Regarding "Disqualifying Status."** The Applicant shall be required to affirm or deny each of the following statements on the Application Form:

- A. Has the Applicant been Criminally Convicted of: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
- B. Are any criminal charges currently pending against the Applicant for: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.

²See Utah Code Ann. §53-10-108(1)(b).

- C. Has the Applicant been Criminally Convicted of a felony within the last ten (10) years;
- D. Has the Applicant been incarcerated in a federal or state prison within the past five (5) years;
- E. Has the Applicant been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.
- F. Has a Final Civil Judgment been entered against the Applicant within the last five (5) years indicating that: (i) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19);
- G. Is the Applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
- H. Does the Applicant have an outstanding arrest warrant from any jurisdiction; or
- I. Is the Applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

(9) **Fee.** The Applicant shall pay such fees as determined applicable by the City, which shall not exceed the reasonable cost of processing the application and issuing the Certificate and/or Identification Badge.

(10) **Execution of Application.** The Applicant shall execute the Application Form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful and accurate.

000-008 Written Disclosures. The Application Form shall be accompanied by written disclosures notifying the Applicant of the following:

(1) The Applicant's submission of the Application authorizes the City to verify information submitted with the Completed Application including:

- A. the Applicant's address;
- B. the Applicant's and/or Responsible Person or Entity's state tax identification and special use tax numbers, if any;

C. the validity of the Applicant's Proof of Identity;

(2) The City may consult any publically available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments.

(3) Establishing Proof of Identity is required before Registration is allowed;

(4) Identification of the fee amount that must be submitted by Applicant with a Completed Application;

(5) The Applicant must submit a BCI background check with a Completed Application;

(6) To the extent permitted by State and/or federal law, the Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection;

(7) The City will maintain copies of the Applicant's Application Form, Proof of Identity, and Identification Badge. These copies will become public records available for inspection on demand at the City offices whether or not a Certificate is denied, granted, or renewed.

(8) The criteria for Disqualifying Status, denial, or suspension of a Certificate under the provisions of this Chapter.

(9) That a request for a temporary Certificate will be granted or denied the same business day that a Completed Application is submitted.

000-009 When Registration Begins. The Licensing Officer shall not begin the Registration process unless the Applicant has submitted a Completed Application. The original identification submitted to establish Proof of Identity shall be returned after the Licensing Officer verifies the Applicant's identity. A copy of the identification may be retained by the Licensing Officer. If an original B.C.I. background check is submitted by the Applicant, the Licensing Officer shall make a copy of the B.C.I. and return the original to the Applicant.

000-010 Issuance of Certificates. The Licensing Officer shall review the Completed Application submitted by the Applicant and issue a Certificate in accordance with the following:

(1) **Temporary Certificate.**

A. A temporary Certificate shall issue allowing the Applicant to immediately begin Door-to-Door Solicitation upon the following conditions:

(i) Applicant's submission of a Completed Application;

- (ii) Applicant's submission of the required fee;
- (iii) Applicant establishes Proof of Identity;
- (iv) the Applicant's representations on the Application Form do not affirmatively show a Disqualifying Status;
- (v) the B.C.I. does not affirmatively show a Disqualifying Status; and
- (vi) the Applicant has not previously been denied a Certificate by the City, or had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Chapter.

B. A temporary Certificate will automatically expire after twenty-five (25) calendar days from issuance, or upon grant or denial of an annual Certificate, whichever period is shorter.

(2) **Annual Certificate.** Within twenty-five (25) calendar days of the issuance of a temporary Certificate the City shall:

- A. Take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the Applicant, including, but not limited to those disclosed with the Application Form.
- B. Issue written notice to the Applicant and the Responsible Person or Entity, if any, that the Applicant either:
 - (i) will be issued an annual Certificate, eligible for renewal one year from the date of issuance of the temporary Certificate; or
 - (ii) will not be issued an Annual Certificate for reasons cited in Section 000-014 of this Chapter.

(3) **Renewal Certificate.** An annual Certificate shall be valid for one year from the date of issuance of the temporary Certificate and shall expire at midnight on the anniversary date of issuance. Any annual Certificate that is not suspended, revoked, or expired may be renewed upon the request of the Registered Solicitor and the submission of a new Completed Application and payment of the Fee, unless any of the conditions for the denial, suspension or revocation of a Certificate are present as set forth in section 000-014, or a Disqualifying Status is present.

000-011 Form of Certificate and Identification Badge.

(1) **Certificate Form.** Should the Licensing Officer determine that the Applicant is entitled to a Certificate, the Licensing Officer shall issue a Certificate to the Applicant. The Certificate shall list the name of the Registered Solicitor and the Responsible Person or Entity, if

any, and the date on which the Certificate expires. The Certificate shall be dated and signed by the License Officer. The Certificate shall be carried by the Registered Solicitor at all times while Soliciting in the City.

(2) **Identification Badge.** With both the temporary and annual Certificates, the City shall issue each Registered Solicitor an Identification Badge that shall be worn prominently on his or her person while Soliciting in the City. The Identification Badge shall bear the name of the City and shall contain: (a) the name of the Registered Solicitor; (b) address and phone number of the Registered Solicitor, or the name, address, and phone number of the Responsible Person or Entity is provided; (c) a recent photograph of the Registered Solicitor; and (d) the date on which the Certificate expires.

000-012 Maintenance of Registry. The Licensing Officer shall maintain and make available for public inspection a copy or record of every Completed Application received and the Certificate or written denial issued by the City. The Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The Licensing Officer may furnish to the head of the City's law enforcement agency a listing of all Applicants, those denied, and those issued a Certificate.

000-013 Non-Transferability of Certificates. Certificates shall be issued only in the name of the Applicant and shall list the Responsible Party or Entity, if any. The Certificate shall be non-transferable. A Registered Solicitor desiring to facilitate or attempt to facilitate Home Solicitation Sales with different: (a) Goods or Services; or (b) Responsible Person or Entity, from those designated in the originally submitted Completed Application, shall submit a written change request to the Licensing Officer. A new Certificate based on the amended information shall issue for the balance of time remaining on the Solicitor's previous Certificate before the amendment was filed. Before the new Certificate is given to the Registered Solicitor, the Registered Solicitor shall obtain a revised Identification Badge from the City, after payment of the Fee for the Identification Badge.

000-014 Denial, Suspension or Revocation of a Certificate of Registration.

(1) **Denial.** Upon review, the Licensing Officer shall refuse to issue a Certificate to an Applicant for any of the following reasons:

A. Denial of Temporary Certificate.

- (i) the Application Form is not complete;
- (ii) the Applicant fails to (1) establish Proof of Identity, (2) provide a B.C.I. or (3) pay the Fees;
- (iii) the Completed Application or B.C.I. indicates that the Applicant has a Disqualifying Status; or
- (iv) The Applicant has previously been denied a Certificate by the City, or has had a Certificate revoked for grounds that still constitute a Disqualifying Status under this chapter.

B. Denial of Annual Certificate.

- (i) The information submitted by the Applicant at the time of the granting of the temporary Certificate is found to be incomplete or incorrect;
- (ii) Since the submission of the Completed Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;
- (iii) Failure to complete payment of the Fees;
- (iv) Since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant;
- (v) Since the submission of the Application, the City or other governmental entity has either Criminally Convicted or obtained a civil injunction against the Applicant for violating this Chapter or similar Federal, State, or municipal laws in a manner rising to the level of a Disqualifying Status; or
- (vi) Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (i) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

C. Denial of Annual Certificate Renewal.

- (i) The information submitted by the Applicant when seeking renewal of a Certificate is found to be incomplete or incorrect;
- (ii) Since the submission of the renewal Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;
- (iii) Failure to complete payment of the Fees;
- (iv) Since the submission of the Application or granting of a Certificate, the City has received a Substantiated Report regarding the past or present conduct of the Solicitor;
- (v) The City or other governmental entity has either Criminally Convicted or obtained a civil injunction against the Applicant for violating this Chapter or similar Federal, State, or municipal laws in a manner rising to the level of a Disqualifying Status; or
- (vi) Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (i) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

(2) **Suspension or Revocation.** The City shall either suspend or revoke a Certificate when any of the reasons warranting the denial of a Certificate occurs.

(3) **Notice of Denial or Suspension.** Upon determination of the Licensing Officer to deny an Applicant's Completed Application or to suspend a Registered Solicitor's Certificate, the City shall cause written notice to be sent to the Applicant or Registered Solicitor by the method indicated in the Completed Application. The Notice shall specify the grounds for the denial or suspension, the documentation or information the City relied on to make the decision, the availability of the documentation for review by Applicant upon one (1) business day notice to the City, and the date upon which the denial or suspension of the Certificate shall take effect. It shall further state that the Applicant or Registered Solicitor shall have ten (10) business days from the receipt of the notice of denial or suspension to appeal the same. The denial or suspension of the Certificate shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in Section 000-003(34)(C)(4), in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a Certificate automatically results in its revocation.

000-015 Appeal. An Applicant or Registered Solicitor whose Certificate has been denied or suspended shall have the right to appeal to the City Council or its designee. Any appeal must be submitted by either the Applicant, the Responsible Person or Entity, or legal counsel for either who: (a) documents the relationship with the Applicant or Responsible Person or Entity; or (b) is licensed or authorized by the State of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

(1) Any appeal must be Submitted in Writing to the City Recorder with a copy to the License Officer within ten (10) business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

(2) Upon request of the Applicant or Registered Solicitor, within one business day, the City will make available any information upon which it relied in making the determination to either deny or suspend the Certificate.

(3) The Appeals Officer shall review, de novo, all written information submitted by the Applicant or Registered Solicitor to the Licensing Officer, any additional information relied upon by the Licensing Officer as the basis for denial, suspension or revocation, and any additional information supplied by the City, Applicant or Registered Solicitor. Any additional information submitted by any party to the appeal to the Appeals Officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the Appeals Officer regarding the additional information submitted by the opposing party.

(4) The Appeals Officer will render a decision no later than fifteen (15) calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in Section 000-015(3), the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

- A. The denial or suspension of the Certificate shall be reversed by the Appeals Officer if upon review of the written appeal and information submitted, the Appeals Officer finds that the Licensing Officer made a material mistake of law or fact in denying or suspending the Applicant or Registered Solicitor's Certificate.
- B. If the written appeal and information submitted indicates that the Licensing Officer properly denied or suspended the certificate of the Applicant or Registered Solicitor, the denial or suspension of the Certificate shall be affirmed and constitute a determination that the suspended Certificate is revoked.
- C. The decision of the Appeals Officer shall be delivered to the Applicant or Registered Solicitor by the means designated in the completed Application, or as otherwise agreed upon when the Appeal was filed.

(5) After the ruling of the Appeals Officer, the Applicant or Solicitor is deemed to have exhausted all administrative remedies with the City.

(6) Nothing herein shall impede or interfere with the Applicant's, Solicitor's, or City's right to seek relief in a court of competent jurisdiction.

000-016 Deceptive Soliciting Practices Prohibited.

(1) No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.

(2) A Solicitor shall immediately disclose to the consumer during face-to-face Solicitation; (i) the name of the Solicitor; (ii) the name and address of the entity with whom the Solicitor is associated; and (iii) the purpose of the Solicitor's contact with the person and/or Competent Individual. This requirement may be satisfied through the use of the Badge and an informational flyer.

(3) No Solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

(4) No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the City of the Solicitor's Goods or Services or of the individual Solicitor.

000-017 "No Solicitation" Notice.

(1) Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a "No Solicitation" sign which shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the Residence.

(2) The display of such sign or placard shall be deemed to constitute notice to any Solicitor that the inhabitant of the Residence does not desire to receive and/or does not invite Solicitors.

(3) It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

(4) The provisions of this Section shall apply also to Solicitors who are exempt from Registration pursuant to the provisions of this Chapter.

000-018 Duties of Solicitors.

(1) Every person Soliciting or Advocating shall check each Residence for any "No Soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Solicitation" signs. If such sign or placard is posted such Solicitor shall desist from any efforts to solicit at the Residence or dwelling and shall immediately depart from such property. Possession of a Certificate of Registration does not in any way relieve any solicitor of this duty.

(2) It is a violation of this Chapter for any person Soliciting or Advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a Residence that bears a "No Solicitation" sign or similar sign or placard for the purpose of engaging in or attempting to engage in Advocating, a Home Solicitation Sale, Door-to-Door Soliciting, or Soliciting.

(3) It is a violation of this Chapter for any Solicitor through ruse, deception, or fraudulent concealment of a purpose to Solicit, to take action calculated to secure an audience with an occupant at a Residence.

(4) Any Solicitor who is at any time asked by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.

(5) The Solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent;

(6) The Solicitor shall not follow a person into a Residence without their explicit consent;

(7) The Solicitor shall not continue repeated Soliciting after a person and/or Competent Individual has communicated clearly and unequivocally their lack of interest in the subject, Goods or Services of the Solicitor;

(8) The Solicitor shall not use obscene language or gestures.

000-019 Time of Day Restrictions. It shall be unlawful for any person, whether licensed or not, to Solicit at a Residence before 9:00 a.m. or after 9:00 p.m Mountain Time, unless the Solicitor has express prior permission from the resident to do so.

000-020 Buyer's Right to Cancel. In any Home Solicitation Sale, unless the buyer requests the Solicitor to provide Goods or Services without delay in an emergency, the seller or Solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel within the third business day after signing an agreement to purchase. Such notice of "Buyer's right to cancel" shall be in the form required by § 70C-5-103, Utah Code Annotated, 1953, or a current version thereof or any State or Federal law modifying or amending such provision.

000-021 Penalties. Any person who violates any term or provision of this Chapter shall be guilty of a Class B Misdemeanor and shall be punished by a fine of not to exceed \$1,000.00 and/or a jail sentence of not to exceed six (6) months.

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*Attorneys for Defendants, Third Party and Counterclaim Plaintiffs
Engineered Structures Inc., and Defendant Western Surety Company*

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 2:09

CLERK OF UTAH

CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

THE PLAINTIFF EXCAVATION, INC., a
Utah Corporation,

Plaintiff,

vs.

ENGINEERED STRUCTURES, INC., an
Idaho Corporation; SAFECO INSURANCE
COMPANY OF AMERICA, a Washington
Corporation; and WESTERN SURETY
COMPANY, a South Dakota Corporation,

Defendants.

ENGINEERED STRUCTURES, INC.,
Third Party and Counterclaim Plaintiff
vs.

KENT W. WHITAKER,
Third Party Defendant

Case No. 1:05cv00070 DS

**ORDER WITHDRAWING
JURY DEMAND**

Judge David Sam

Defendants Engineered Structures, Inc. ("ESI"), and Western Surety Company (hereinafter collectively referred to as ESI or the Defendants), and KW Excavation ("Plaintiff") have jointly moved this court for an Order pursuant to Rule 38(d) of the Federal Rules of Civil Procedure withdrawing any demand for a jury trial in this matter and setting the case for a bench trial. Based upon the consent of the parties, the fact that no jury demand was made in this matter, and that the parties to this litigation stipulate that any jury demand, if made, should be withdrawn, it is hereby ORDERED that any jury demand filed in this case is withdrawn, and this case will be set for a jury trial in accordance with this Court's previous Order.

Respectfully submitted this 12th day of September, 2006.

BY THE COURT



THE HONORABLE DAVID SAM

2006 SEP 12 P 2: 09

OFFICE OF
DAVID S. BROWN

Page 1 of 3

1. Defendant Heath D. Johnson received service in this state by delivery of a Summons and Complaint on September 30, 2005.
2. Defendant Heath D. Johnson is in default for failure to file an Answer or any type of responsive pleading and entry of default has been made.
3. Defendant is not an infant or incompetent person.
4. Plaintiffs' costs in this case include \$230.00 for filing the complaint and \$75.00 for service.

Therefore, the court hereby enters an order enjoining Heath D. Johnson from harassing, threatening or otherwise contacting Plaintiffs and/or individuals known by Defendant to be Plaintiffs' family members and associates.

It is further ordered that pursuant to rule 55 (b)(2) of Federal Rules of Civil procedure, this matter be set for a Hearing before this Court to more thoroughly establish

/

/

/

/

the scope of damages for all general, consequential, special, and/or punitive damages and costs incurred under these causes of action in an amount to be proved at trial.

ATTEST my hand and the seal of this Court this 12th day of September 2006.

BY:



JUDGE DAVID SAM

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL AYALA-VELIZ a/k/a Alfonso
Gastelum-Diaz a/k/a Rafael Vasquez Espinoza,

Defendant.

1:06-CR-2-PGC

ORDER

**TO REFLECT DEFENDANT
AYALA-VELIZ'S TRUE NAME,
TO WIT: RAFAEL VASQUEZ-
ESPINOSA.**

Based upon good cause appearing, the Court ORDERS that the file reflect Miguel Ayala-Veliz's true name, to wit: RAFAEL VASQUEZ-ESPINOSA.

BY ORDER OF THE COURT:



PAUL G. CASSELL, Judge
United States District Court

9/11/06

UNITED STATES DISTRICT COURT

Northern

District of

Utah

UNITED STATES OF AMERICA

V.

Rafael Vasquez-Espinoza

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX106CR000002-002

USM Number: 12982-081

Robin K. Ljungberg

Defendant's Attorney

FILED
U.S. DISTRICT COURT
2006 SEP 11 P 2:05
DISTRICT OF UTAH

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 USC § 841(a)(1)	Possession With Intent to Distribute Methamphetamine		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 2 ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/5/2006

Date of Imposition of Judgment



Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

9/7/06

DEFENDANT: Rafael Vasquez-Espinoza
CASE NUMBER: DUTX106CR000002-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

121 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to San Diego as possible to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rafael Vasquez-Espinoza
CASE NUMBER: DUTX106CR000002-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Rafael Vasquez-Espinoza
CASE NUMBER: DUTX106CR000002-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Rafael Vasquez-Espinoza
CASE NUMBER: DUTX106CR000002-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Rafael Vasquez-Espinoza
CASE NUMBER: DUTX106CR000002-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

Northern

District of

Utah

UNITED STATES OF AMERICA

V.

David James Peterson

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX106CR000005-002

USM Number: 13263-081

Jamie Zenger

Defendant's Attorney

Date of Original Judgment: 6/22/2006

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☒ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Indictment
☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(b)	Bank Larceny		1

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/11/2006

Date of Imposition of Judgment

Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

Judgment — Page 2 of 9

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

18 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Utah as possible to facilitate family visitation and drug treatment.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of
36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

Judgment—Page 4 of 9

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless he is in compliance with any established payment schedule and obtains the approval of the probation office.
2. The defendant shall provide the probation office access to all requested financial information.
3. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol, such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 24,164.67

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
CUNA Mutual Group	\$3,829.93	\$3,829.93	
Kristie Chadwick			
Subogation Specialist C0733610			
PO Box 1221			
5910 Mineral Point Road			
Madison, WI 53701-1221			

Progressive Insurance Company	\$5,000.00	\$5,000.00
Claim# 067804981		
10705 South Jordan Gateway, Suite 150		
South Jordan, Ut 84095		

TOTALS \$ 24,164.67 \$ 24,164.67

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

Judgment — Page 6 of 9

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Bank of Utah	\$15,334.74	\$15,334.74	
PO Box 231			
Ogden, UT 84401			

* Findings for the total amount of losses are required by Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

Judgment — Page 7 of 9

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 24,264.67 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Special Assessment Fee of \$100 due immediately. Restitution of \$24,164.67 is payable at a rate of \$25 a quarter while incarcerated and at a minimum rate of \$200 a month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

David James Peterson-002 Kacy M. Peterson-001, Darrell James Maguire, Jr.-003 owe joint and several to CUNA Mutual Grp and Progressive Ins Co.; David James Peterson-002 and Darrel James Maguire Jr -003 owe joint and several to Bank of Utah, Hunt Enterprises and Diebold. See following page for total amounts.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: David James Peterson
CASE NUMBER: DUTX106CR000005-002

Judgment — Page 8 of 9

ADDITIONAL DEFENDANTS AND CO-DEFENDANTS HELD JOINT AND SEVERAL

Case Number Defendant and Co-Defendant (including defendant numbers)	<u>Total Amount</u>	<u>Joint and Several Amount</u>	<u>Corresponding Payee, if appropriate</u>
David James Peterson - 002	\$8,829.93	\$8,829.93	
Kacy M. Peterson - 001	\$8,829.93	\$8,829.93	
Darrell James Maguire, Jr - 003	\$8,829.93	\$8,829.93	
David James Peterson - 002	\$15,334.74	\$15,334.74	
Darrell James Maguire, Jr - 003	\$15,334.74	\$15,334.74	

JEREMY M. DELICINO - 9959
Attorney for Defendant
10 West Broadway, Suite 650
Salt Lake City, Utah 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

FILED
U.S. DISTRICT COURT
2006 SEP 11 P 1:47
DISTRICT OF UTAH
CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CURTIS SCOTT WILLIAMS,

Defendant.

:

:

:

:

FINDINGS AND ORDER

Case No. 1:06-CR-011 DB

Based on motion of the defendant and stipulation of the plaintiff, the court enters the following;

FINDINGS

1. If defendant's motion to continue were denied it would deny the defendant continuity of counsel.
2. Counsel needs additional time to effectively prepare for trial and consult with the defendant.
3. Counsel has exercised due diligence in preparing this case.
4. The ends of justice in granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the trial date of September 11, 2006, be stricken and the trial continued.

It is further, ORDERED that the time between September 11, 2006, and the next trial date be excluded from the computation for the time for trial as described in 18 U.S.C. §3161.

DATED this 11 day of September, 2006.

BY THE COURT:

3 Day Jury Trial set for
11/13/2006 @ 8:30 A.M.



HONORABLE DEE BENSON
United States District Court Chief Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

Vernon G. Stejskal (E-Filer)
mrumph@utah.gov dwink@dea.state.ut.us

/s/ Brittany Bagley

D. Bruce Oliver #5120
Attorney for Defendant
180 South 300 West, Suite 210
Salt Lake City, Utah 84101-1490
Telephone: (801) 328-8888
Fax: (801) 595-0300

FILED
U.S. DISTRICT COURT
2006 SEP 12 A 11:53
CLERK OF COURT
FEE CITY CLERK

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE STATE OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL BRADFORD,

Defendant.

ORDER FOR SUBSTITUTION OF
COUNSEL

Case No. 1:06-cr-00015-TS-ALL

Judge Ted Stewart

The Court, having reviewed D. Bruce Oliver's motion and finding good cause, hereby

ORDERS, ADJUDGES AND DECREES:

1. Vanessa M. Ramos is withdrawn as counsel for the above named Defendant.
2. Attorney D. Bruce Oliver is entered as counsel for the Defendant in substitution of Vanessa M. Ramos.

DATED this 12 ^{Sept.} day of August, 2006.

BY THE COURT:

Brooke C. Wells

TED STEWART

Federal Judge

Magistrate

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:14

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RUSSELL WAGHER, et al.,

Defendants.

1:06CR00027-DB

ORDER TO DISMISS THE ASSET
1040 12th STREET, OGDEN, UTAH
WITHOUT PREJUDICE

JUDGE: DEE BENSON

Based on the Motion to Dismiss the Asset 1040 12th Street, Ogden, Utah, without
prejudice, accompanying memorandum, and good cause appearing,

IT IS HEREBY ORDERED, that the asset 1040 12th Street, Ogden, Utah, is dismissed
without prejudice from this criminal Indictment.

DATED this 12th day of September, 2006.

BY THE COURT:


DEE BENSON, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Carole R. White,

Plaintiff,

vs.

The Kroger Co., et al.

Defendants.

**SCHEDULING ORDER AND
ORDER VACATING HEARING**

Case No. 1:06-cv-80

District Judge_ Paul G. Cassell

Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for November 8, 2006, at 2:30 p.m. before Magistrate Judge Brooke C. Wells is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>9/5/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>9/6/06</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>9/29/06</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|--|----------------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10 or #</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10 or #</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7 or #</u> |

- | | | |
|----|---|--------------------|
| d. | Maximum Interrogatories by any Party to any Party | <u>25 or #</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>#</u> |
| f. | Maximum requests for production by any Party to any Party | <u>#</u> |
| | | <u>DATE</u> |
- 3. AMENDMENT OF PLEADINGS/ADDING PARTIES²**
- | | | |
|----|--|-----------------|
| a. | Last Day to File Motion to Amend Pleadings | <u>10/27/06</u> |
| b. | Last Day to File Motion to Add Parties | <u>10/27/06</u> |
- 4. RULE 26(a)(2) REPORTS FROM EXPERTS³**
- | | | |
|----|-----------------|-----------------|
| a. | Plaintiff | <u>00/00/00</u> |
| b. | Defendant | <u>00/00/00</u> |
| c. | Counter reports | <u>00/00/00</u> |
- 5. OTHER DEADLINES**
- | | | |
|----|--|-----------------|
| a. | Discovery to be completed by: | |
| | Fact discovery | <u>00/00/00</u> |
| | Expert discovery | <u>00/00/00</u> |
| b. | (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e) | <u>00/00/00</u> |
| c. | Deadline for filing dispositive or potentially dispositive motions | <u>12/22/06</u> |
- 6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION**
- | | | |
|----|---------------------------------------|-----------------|
| a. | Referral to Court-Annexed Mediation | <u>Yes/No</u> |
| b. | Referral to Court-Annexed Arbitration | <u>Yes/No</u> |
| c. | Evaluate case for Settlement/ADR on | <u>00/00/00</u> |
| d. | Settlement probability: | |

7. **TRIAL AND PREPARATION FOR TRIAL: Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.**

a. Rule 26(a)(3) Pretrial Disclosures⁴

Plaintiff

Defendant

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

c. Special Attorney Conference⁵ on or before

d. Settlement Conference⁶ on or before

e. Final Pretrial Conference **March, 2007**

3:00 p.m.

5/7/07

f. Trial

Length

Time

Date

i. Bench Trial

1 day

8:00 am

5/21/07

ii. Jury Trial

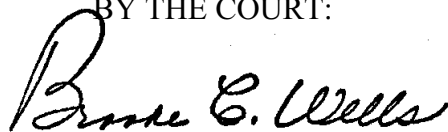
days

8. **OTHER MATTERS:**

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13th day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

S:\IPT\2006\White v. Kroger et al. 106cv80 PGC alp.wpd

Mark M. Bettilyon (4798)
Carolynn Clark (9852)
RAY, QUINNEY & NEBEKER
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 12: 28

DISTRICT OF UTAH

BY: DEPUTY CLERK

RECEIVED

SEP 12 2006

OFFICE OF
JUDGE TENA CAMPBELL

*Attorneys for Defendant Keys Fitness, Inc. and
Keys Backyard, LP*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ICON HEALTH & FITNESS, INC.,

Plaintiff,

v.

KEYS FITNESS, INC. a Texas corporation,
and KEYS BACKYARD, LP, a Texas
company,

Defendants.

ORDER GRANTING
EXTENSION OF TIME FOR
DEFENDANTS TO FILE ANSWER

Civil No. 1:06-CV-087 TC

Judge Tena Campbell

Having reviewed the Stipulation For Extension Of Time For Defendants To File Answer filed by the parties and whereas the parties have agreed to extend the time for Defendants Keys Fitness , Inc. and Keys Backyard, LP (collectively "Defendants") to answer or otherwise respond to Plaintiff ICON Health & Fitness, Inc.'s ("ICON") Complaint, and for good cause shown:

IT IS HEREBY ORDERED that Defendants may have up to and including September 26, 2006, in which to file its Answer or otherwise respond to Plaintiff's Complaint.

DATED this 13 day of September, 2006

BY THE COURT



Honorable Tena Campbell
United States District Court

AGREED TO AS TO FORM

WORKMAN NYDEGGER

/s/ Robyn L. Phillips

Larry R. Laycock

David R. Wright

Robyn L. Phillips

UNITED STATES DISTRICT COURT

District of

UNITED STATES OF AMERICA

V.

JOSE LORENZO ANDINO

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX200CR000156-0001

USM Number: 08215-081

Richard MacDougall

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilty to violation of condition(s) 1-12 of the Amended Petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number

Nature of Violation

Violation Ended

1 Defendant submitted positive urine sample

2 Defendant failed to submit to random urinalysis testing

3 Defendant failed to submit monthly supervision reports

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 0721

Defendant's Date of Birth: 1/10/1963

Defendant's Residence Address:

9/8/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U.S. District Judge

Title of Judge

9/8/2006

Date

Defendant's Mailing Address:

ADDITIONAL VIOLATIONS

[illegible]

DEFENDANT: JOSE LORENZO ANDINO
CASE NUMBER: DUTX200CR000156-0001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

1 year and 1 day

☒ The court makes the following recommendations to the Bureau of Prisons:

Incarceration at a BOP facility near Utah

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE LORENZO ANDINO
CASE NUMBER: DUTX200CR000156-0001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

No term of supervised release imposed.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 12:28

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEPUTY CLERK

SALT LAKE TRIBUNE PUBLISHING
COMPANY, LLC,

Plaintiff,

vs.

AT&T CORPORATION; AT&T
BROADBAND, LLC, (now Comcast
Corporation); MEDIANEWS GROUP, INC.;
KEARNS-TRIBUNE, LLC; and, DESERET
NEWS PUBLISHING COMPANY,

Defendants.

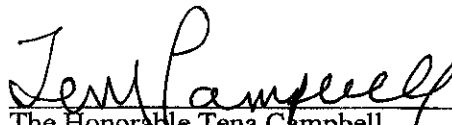
**ORDER FOR PRO HAC VICE
ADMISSION**

Case No. 2:00-CV-00936 TC

Judge Tena Campbell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Victor R. Marshall in the United States District Court, District of Utah in the subject case is GRANTED.

DATED this 13 day of Sept, 2006.


The Honorable Tena Campbell
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:13

SHERYL CONFERE

Petitioner,

vs.

JO ANNE B. BARNHART, Commissioner,
Social Security Administration

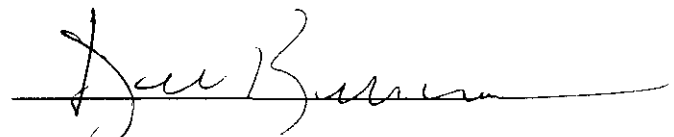
Respondent.

ORDER

Case No. 2:02-CV-673 DB
Judge Dee Benson

Ms. Confere moves for leave to proceed in forma pauperis on appeal to the Tenth Circuit Court of Appeals. Having considered her motion and affidavit outlining her financial affairs, the Court GRANTS her motion pursuant to 28 U.S.C. § 1915.

Dated this 12th day of September, 2006.



Dee Benson
United States District Court Judge

FILED
U.S. DISTRICT COURT

2006 SEP 12 A 9:52

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

ROBERT B. SYKES (#3180)
ALYSON E. CARTER (#9886)
ROBERT B. SYKES & ASSOCIATES, P.C.
311 South State Street, Suite 240
Salt Lake City, Utah 84111
Telephone: (801) 533-0222
Facsimile: (801) 533-8081

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

WENDIE H. TINGEY,

Plaintiff,

v.

RADIONICS, A DIVISION OF TYCO
HEALTHCARE GROUP LP, A UTAH
CORPORATION; John Does I-V; Jane
Does I-V; ABC PARTNERSHIPS I-X;
and XYZ CORPORATIONS I-X,

Defendants.

**ORDER Re: PLAINTIFF'S
MOTION FOR REMOVAL OF
KEVIN M. SHEFF**

Case No: 2-02CV-00710

Judge Ted Stewart

Magistrate Judge Alba

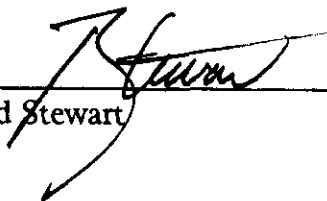
Based upon Plaintiff's Motion for Removal of Kevin M. Sheff,

IT IS HEREBY ORDERED:

Kevin M. Sheff shall be removed from the mailing certificate in regard to
the above-referenced matter.

DATED this 11th day of September, 2006.

BY THE COURT:



Hon. Ted Stewart

Q:\CLIENT\1768 Tingey\3. MOT\Motions (U.S.)\18-Order-Removal KMS.090806.wpd

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION

**OWNER-OPERATOR
INDEPENDENT DRIVERS
ASSOCIATION, INC., ET AL.,**

Plaintiffs,

vs.

C.R. ENGLAND, INC.,

Defendant.

**ORDER AND REFERRAL TO
SETTLEMENT CONFERENCE
PROCEEDINGS**

Case No. 2:02-CV-950 TS

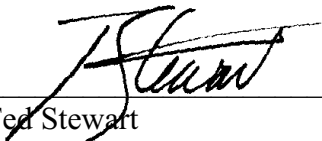
The above-entitled matter is hereby referred to the magistrate judge to conduct a Settlement Conference pursuant to DUCivR 16-3(b). Any objection to this order must be filed within ten days.

Settlement proceedings in this matter will be governed by the provisions of DUCivR 16-3, including its provisions on the confidentiality of Settlement Conferences.

IT IS HEREBY ORDERED that counsel shall meet for a Settlement Conference in front of Magistrate Judge Nuffer on September 25, 2006 at 9:00 a.m. in Room 405 of the courthouse.

DATED this 13th day of September, 2006.

By



Ted Stewart
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., et al. Plaintiff(s), vs. C.R. ENGLAND, INC. Defendant(s).	ORDER FOR SETTLEMENT CONFERENCE Case No: 2:02-CV-950 TS District Judge Ted Stewart Magistrate Judge David Nuffer
--	--

Pursuant to the order of the district judge this case is set for a settlement conference before the undersigned on Monday, September 25, 2006, from 9:00 a.m. through 5:00 p.m., at the U.S. Courthouse, 350 South Main Street, Salt Lake City, UT (check with Judge Nuffer's chambers for room number).

IT IS HEREBY ORDERED:

Participation of Parties: Each party or, in the case of an entity, a representative with full settlement authority, must be physically present and participate in the settlement conference for the entire time period. Counsel must also be present.

Case Status Report: Counsel shall meet and confer before the settlement conference, the parties shall deliver an agreed **case status report by Wednesday, September 21, 2006 at 12:00 p.m.** directly to the Magistrate Judge at mj.nuffer@utd.uscourts.gov or Room 483, U.S. Courthouse, 350 South Main Street, Salt Lake City, UT 84101. The agreed case status report shall include the following:

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded, and relief sought;
3. A brief statement of the facts and issues upon which the parties agree and a description of the major issues in dispute; a
4. A summary of relevant proceedings to date including rulings on motions and motions outstanding; and
5. A certification of counsel that all fact discovery has been completed.

Confidential Settlement Conference Statement: By Wednesday, September 21, 2006 at 12:00 p.m., each party shall separately lodge with the Magistrate Judge a **confidential settlement conference statement** including:

1. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;
2. An estimate of the cost and time to be expended for further discovery, pretrial and trial;
3. Identification of any discrete issues which, if resolved, would aid in the settlement of the case; and
4. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands.

The **confidential settlement conference statement** should be delivered directly to the Magistrate Judge. Copies of the **confidential settlement conference statement** shall not be filed with the Clerk of the Court, nor served upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these **confidential settlement conference statements**.

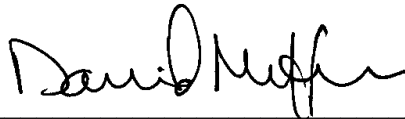
Confidentiality: No report of proceedings, including any statement made by a party,

attorney, or other participants, in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission unless otherwise discoverable. Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the conference except as provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement conference process, except as required by law.

For questions related to the conference, counsel may contact Michelle Roybal, ADR Administrator, at 801 524 6128.

September 13, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer
U.S. Magistrate Judge

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:14

DISTRICT OF UTAH

CLERK
DEPUTY CLERK

PEGGY E. STONE (6658)
Assistant Utah Attorneys General
MARK SHURTLEFF (4666)
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Attorneys for Defendant Reed Stringham
160 East 300 South - Sixth Floor
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Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

DONALD L. RIVERA, an individual; DAN
TRUJILLO, an individual;
JENNY ARCHULETA, an individual; and
JESSE BOWMAN, an individual,

Plaintiffs,

vs.

SALT LAKE COMMUNITY COLLEGE, a
higher education institution and political
subdivision of the STATE OF UTAH;
REED STRINGHAM, III, an individual;
and CONSTANCE HUGHES, an
individual,

Defendants.

**ORDER GRANTING EX PARTE
MOTION TO ENLARGE THE TIME
TO RESPOND TO CONSOLIDATED
PLAINTIFF ROBERT JOSEPH'S
MOTION TO ALTER OR AMEND
JUDGMENT**

Case No. 2:03-CV-764 DB
(Lead Case)

Case No. 2:03-CV-765 TS
(Consolidated Case)

Case No. 2:03-CV-1050 PGC
(Consolidated Case)

Case No. 2:04-CV-198 TS
(Consolidated Case)

Judge Dee Benson

Based upon the *Ex Parte Motion To Enlarge the Time To Respond to Consolidated Plaintiff Robert Joseph's Motion To Alter or Amend Judgment* and good cause appearing, the motion is granted.

Reed M. Stringham, III, has up to and including September 12, 2006 to respond to the motion.

DATED this 12th day of September, 2006.

BY THE COURT

Dee Benson

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CLIFFORD WARREN PERRY,
Defendant.

ORDER
AND
MEMORANDUM DECISION

Case No. 2:04-CR-178 TC

Defendant Clifford Warren Perry has been indicted on one count of knowing possession of a firearm by a convicted felon, and aiding and abetting co-defendants in the same, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 2. Mr. Perry filed a motion to suppress statements obtained by the government during multiple interviews of Mr. Perry in December 2003 and January 2004 while Mr. Perry was an inmate at the Utah State Prison. The interviews stemmed from the presence of a gun in the inmate work facility at the prison.

Specifically, Mr. Perry contends that (1) the government violated his rights under Miranda v. Arizona, 384 U.S. 436 (1966), when it interrogated him without giving a Miranda warning; (2) the government violated his rights when it continued interrogation of Mr. Perry after he requested an attorney; (3) the government coerced Mr. Perry's statements by interrogating him when he was under duress from harsh conditions deliberately created by prison officers; and (4) otherwise admissible statements made by Mr. Perry after his rights were violated should be suppressed as well due to bad faith conduct of prison officials. The United States contends that

Mr. Perry, who testified during the evidentiary hearing, is not credible; that the government witnesses' testimony belies Mr. Perry's allegations; and that there is no evidence of bad faith on the part of the government.

The court finds that Mr. Perry's right to counsel was violated on December 8, 2003. Accordingly, the statements he made during the law enforcement initiated interview of December 8, 2003, must be suppressed. But because Mr. Perry initiated the January 12, 2004 interview, during which he validly waived his Miranda rights, the statements he made during that session should not be suppressed. Accordingly, Defendant Clifford Perry's Motion to Suppress is GRANTED IN PART and DENIED IN PART.

FINDINGS OF FACT¹

Altogether, five interview or interrogation sessions occurred between Mr. Perry and investigating officers. They occurred on (1) the morning of December 5, 2003; (2) the afternoon of December 5, 2003; (3) December 8, 2003; (4) December 12, 2003; and (5) January 12, 2004. These five sessions were all related to the report and recovery of a gun hidden in the prison, and the investigation that followed.

Mr. Perry does not seek to suppress any statements made during the morning of December 5, 2003. And the government does not intend to present any statements made on the

¹Unless otherwise noted, the facts are taken from the testimony presented during the June 2, 2006 evidentiary hearing on Mr. Perry's Motion to Suppress (see Transcript of June 2, 2006 Evidentiary Hearing on Defendant's Motion to Suppress ("Tr. 1")), and the June 14, 2006 evidentiary hearing (continued from June 2, 2006) on the motion to suppress (see Transcript of June 14, 2006 Evidentiary Hearing (Continued) on Defendant's Motion to Suppress ("Tr. 2")). In addition, the Transcript of the February 24, 2005 Evidentiary Hearing on Defendant Paul Kimball's Motion to Suppress Evidence is also part of the record.

afternoon of December 5, 2003, because it concedes that the interview was a custodial interrogation and no Miranda warning was given during that session. The government also does not intend to present any statements made by Mr. Perry on December 12, 2003. That leaves the statements made during the December 8th and January 12th sessions. But the events occurring during the other interview sessions are still relevant to the issues before the court, so they will be discussed as well.

Events Leading Up to the December 5, 2003 Morning Session

On December 4, 2003, Bryant Green, a supervisor in the Utah State Prison's law enforcement bureau over investigations, received a call from Kevin Pepper, an investigator with the Utah Department of Corrections. Investigator Pepper said he had received a call from a confidential informant in the prison about a serious, but unspecified, problem in the prison. The informant said that "he had something really big, something really important that he needed to talk to [Investigator Pepper] about." (Tr. 1 at 53.) But the confidential informant did not go into detail. Instead, he wanted to meet with Investigator Pepper in person to discuss the problem. Investigator Pepper, who received the call at home after work, told the informant that he would meet with the informant the next day.

Later that same evening, Captain Green received a call from a shift commander about a tip from an inmate (identified only as "Trujillo" in the record) about the presence of a firearm inside the prison. Captain Green arranged for an investigation to begin the next day at 8:00 a.m.

On the morning of Friday, December 5, 2003, Captain Green met with Investigator Pepper, Investigator Leo Jonathan "John" Perry (a Utah Department of Corrections investigator assigned to the prison), and other officers. Then Captain Green, Investigator Pepper, and

Investigator Perry arranged to meet with Investigator Pepper's confidential informant, Paul Kimball (a co-defendant in this case), that morning.

December 5, 2003 Morning Session

Because Mr. Kimball was being held in a less restrictive block of the prison (C Block), he was allowed to walk unescorted to the interview in the prison's Wasatch facility administration corridor. When Mr. Kimball arrived at the interview room, he was accompanied by Mr. Perry (who was also housed in C Block). Mr. Perry testified that he also requested an interview that morning, but through a different prison official. Mr. Kimball and Mr. Perry were not handcuffed and came to the meeting voluntarily. Mr. Kimball and Mr. Perry met with Investigator Pepper and Captain Green, and Mr. Kimball informed the two investigators that he and Mr. Perry had discovered a gun hidden in the Utah Correctional Industries (U.C.I.) facility (where inmates work during the day). No Miranda warnings were given, and neither Mr. Kimball nor Mr. Perry were suspects in any crime at that point.

Upon learning about the gun from Mr. Kimball (whom prison officials considered to be a reliable informant), the investigators' primary concern became recovering the gun and protecting the safety of informants Kimball and Perry. After Mr. Kimball told them where the gun was hidden, the investigators sent Mr. Kimball and Mr. Perry back to their cells in C Block, the prison went into "lockdown" (that is, all inmates were locked in their cells) at about 10:45 a.m., and the gun was recovered.

December 5, 2003 Afternoon Session

Prison investigators began interviewing many different inmates about the gun.² As part of that process, in the early afternoon of December 5, 2003, Investigator Perry initiated another meeting with Mr. Perry, again held in an office in the administration corridor. Although Investigator Pepper was present, he was not the lead investigator (that day was his last day of employment with the Utah Department of Corrections). Captain Green stopped in for a short time during the afternoon session with Mr. Perry.

Before Investigator Perry met with Mr. Perry, he met with inmate Paul Trimble. According to Investigator Perry, “we received more information from inmate Trimble that inmate Kimball had been involved in orchestrating bringing the gun into the prison.” (Tr. 2 at 6.) When Investigator Perry was asked whether Mr. Trimble mentioned anything about Mr. Perry’s involvement with the gun, the investigator answered:

It seems that [Mr. Trimble] mentioned inmate Kimball and [inmate] Perry being together when the meal carts were shipped over to the U.C.I. facility, but inmate Trimble at that point didn’t discuss inmate Perry’s involvement in bringing the gun into the prison. . . . [The] information [from Mr. Trimble] made us suspect inmate Kimball’s story as to his personal involvement in the gun coming into the prison in the first place. Based on that, [the purpose of] our interviews with [inmates] Jeff Roberts and Clifford Perry [on the afternoon of December 5th] was to try and determine or try and support inmate Trimble’s side or trying to fill in the gaps between inmate Kimball’s story and inmate Trimble’s story.

(Tr. 2 at 6, 8.) But Investigator Perry testified that it was “fair to characterize [his] approach to Mr. Perry that afternoon as starting to get a little fishy about [Mr. Perry],” and he admitted that he

²Investigator Perry estimated that at least fifteen inmates were interviewed. When asked why the large number, Investigator Perry replied: “Our concern was singling out specific inmates to make them appear as if they were an informant or they were sharing information in this case.” (Tr. 2 at 5.)

had a suspicion at that point that Mr. Perry might be involved with the alleged scheme to bring the gun into the prison. (Id. at 8.)

Investigator Pepper testified that he did not recall one way or the other whether a Miranda warning was given to Mr. Perry during the afternoon session. Investigator Perry said he did not give Mr. Perry a Miranda warning at that point, but his testimony suggests that he assumed that Investigator Pepper, who had interviewed Mr. Perry earlier, had given the Miranda warning already. His testimony also suggests that he did not consider Mr. Perry a suspect at that time.

Q When you started the interview before talking to Mr. Perry, did you give him his Miranda rights?

A Not during that interview.

Q Why not?

A A couple of reasons. . . . The first thing was that was the last day that Investigator Pepper was working at the prison. He originally had received the information of the gun coming in – or the weapon being in the facility. He had originally talked with inmate Kimball and inmate Perry.

I relied pretty heavily on Investigator Pepper at that point as the primary in that interview. Towards the end of the day it became more apparent to me that Investigator Pepper was cutting his ties with the case and that the investigation would be mine.

And so the second answer to that question is inmate Perry, like inmate Trimble, the focus of our investigation with them was that we felt like we didn't have anything hard – any hard fact that they were involved in bringing the gun in at that point. At least from my perspective it was our intention to get [corroborating] evidence or information as to inmate Kimball bringing the gun in.

(Tr. 2 at 11.)

The session was confrontational and voices were raised. The investigators described Mr. Perry as uncooperative (particularly in comparison to his demeanor during the morning session).

Investigator Perry testified that “the focus of the interview was becoming more poignant as to, you know, things are not adding up.” (Tr. 2 at 12.) He said that

in that interview it came to a point where [Mr. Perry] wasn’t going to give anymore information. He didn’t want to talk about it anymore. I don’t remember exactly how he articulated that, but I remember that we were basically getting to the point where he was digging in his heels and we weren’t making any progress. . . . [W]ithin that 15 minute time frame we terminated the interview. . . . It seems to me that Captain Green had come in, we had consulted with him, we kind of explained the situation, and it terminated after that.

(Id. at 13-14.)

Mr. Perry unequivocally testified that he requested an attorney during the questioning, that his request was not honored, and that the questioning continued despite his request.

Q At . . . that second December 5th interview, were you given Miranda when you got there?

A No, I wasn’t.

Q Were you given Miranda at anytime during that second interview on December 5th?

A I think that when Pepper turned on the interview, he was doing that, was reading me Miranda. But when I asked him if I was a suspect and he said that until they cleared me I was, I told him, “Well, I want a [sic] attorney at this time.” I think that he was reading me Miranda and I cut him off, or something to that effect.

Q So you think he started to and you cut him off?

A Yeah. And that’s when I asked him if I was a suspect. And at that time I got a little aggressive with my behavior and my vocabulary.

Q So you asked if you were a suspect. He indicated that until he cleared you, you were; correct?

A Yes.

Q And you asked for counsel at that time?

A Yes, I did.

Q Did they make arrangements for an attorney to be present for you?

A No, they didn't.

....

A I told [Investigator Pepper] . . . if they had suspected me of being involved in anything concerning that gun, then I wanted an attorney. That I had nothing further to say to them.

Q Was the interview terminated at that point?

A No, it wasn't. It went on for some time after that.

Q Did you get an attorney from that point on in the interview?

A No, I didn't.

(Tr. 2 at 53-55.)

Investigator Pepper did not recall whether Mr. Perry requested an attorney during the afternoon session.³ Investigator Perry testified that he did not recall Mr. Perry asking for counsel during the afternoon questioning:

Q What about inmate Perry telling you during that [afternoon] interview on the 5th [of December] that he didn't want to talk about it and he wanted an attorney? Do you recall that happening?

A I don't.

Q You never recall him asking for counsel?

A No. In fact, I feel very sensitive as far as the Miranda rights, and was – I felt like it was important to document that he had received his Miranda rights when I was conducting the interview – interviews, and so that is

³The subject did not come up during Captain Green's testimony.

why I had him sign subsequent Miranda warning forms.

(Tr. 2 at 32.) Later during the evidentiary hearing, the court pressed Investigator Perry for clarification about whether Mr. Perry requested an attorney during the December 5, 2003 afternoon interview.

THE COURT: Did [Mr. Perry] ask for an attorney?

THE WITNESS: I don't recall him asking for an attorney.

THE COURT: When you say that, what do you mean, that he could have and you don't remember it or he did not?

THE WITNESS: I don't believe that he asked for an attorney.

THE COURT: When you say you don't believe, could he have?

THE WITNESS: I don't believe nor recall him asking for an attorney. I think if he had, I would have taken significant note to that.

THE COURT: But you do not – as you sit – and I don't meant to quarrel with you. Can you say unequivocally that he did not or are you unable to say that?

THE WITNESS: During the course of that conversation, I do not remember him asking for an attorney.

(Tr. 2 at 92.) After the colloquy between the court and Investigator Perry, the government asked Investigator Perry follow-up questions:

Q During [your six-year experience as an investigator], how many interviews have you conducted?

A Hundreds.

Q . . . During those hundreds of interviews, when – have there been people that have requested an attorney while you've been interviewing them?

A Yes.

Q What have you done in all of those cases?

A At that point I terminate the interview.

Q In this circumstance, if Mr. Perry had asked for an attorney, what would you have done?

A I would have terminated the interview.

....

Q At any point did you terminate this interview with Mr. Perry on December 5th in the afternoon?

A Eventually yes, we terminated the interview.

Q Was that because Mr. Perry requested an attorney?

A No.

(Id. at 93-94.) Again, the court asked Investigator Perry for clarification.

THE COURT: But you do – but I guess I’m confused, officer. Can you say he did not ask for an attorney?

THE WITNESS: Again, the same response. I do not remember him asking for an attorney.

(Id. at 94.) For the reasons set forth below in the “Conclusions of Law” section, the court finds that Mr. Perry did request an attorney but did not receive one. Moreover, the interrogation continued despite his request.

After the interview, prison officials moved Mr. Perry from C Block to the Uinta 1 Facility, the maximum security area of the prison. They did this for safety and security reasons.

(See Tr. 1 at 44-45).

December 8, 2003 Session

On December 8, 2003, Investigator Perry initiated another interview with Mr. Perry. This time the interview took place in the contact visiting booth in the Uinta 1 facility. No one else was present. Investigator Perry read Mr. Perry his Miranda rights, and Mr. Perry signed a waiver of those rights. Mr. Perry contends that he was coerced into signing the waiver because of the conditions he experienced in the Uinta 1 facility a day or two before the interview.⁴ The interview lasted approximately two hours.

December 12, 2003 Session

Captain Green initiated the December 12, 2003 interview session with Mr. Perry. Another officer accompanied Captain Green. No other individuals were present. No Miranda warning was given. Mr. Perry referred to the interview as “informal” (Tr. 2 at 67) and testified that “it was more telling me about Kimball and asking questions about Kimball.” (Id. at 74.)

January 12, 2004 Session

Mr. Perry initiated this interview session based on letters he had received from Mr. Kimball. He met with Investigator Perry, who gave Mr. Perry a Miranda warning. An attorney was not present. Mr. Perry signed a waiver of his Miranda rights, agreed to talk, and did not request an attorney.

CONCLUSIONS OF LAW

As noted above, Mr. Perry does not seek to suppress any statements made during the

⁴Because the court bases its ruling on Mr. Perry’s right to an attorney, the court need not elaborate on Mr. Perry’s allegations of harsh conditions in Uinta 1 between December 5, 2003, and December 8, 2003.

December 5, 2003 morning session. The government does not intend to present any statements made during the December 5, 2003 afternoon session, or the December 12, 2003 session. The court must determine whether to suppress the statements Mr. Perry made on December 8, 2003, and January 12, 2004. For the reasons set forth below, the court concludes that Mr. Perry's statements on December 8, 2003, were obtained in violation of his right to counsel and so must be suppressed. But his statements on January 12, 2004, an interview that Mr. Perry initiated, were lawfully obtained and so will not be suppressed.

December 8, 2003 Statements

The admissibility of the December 8, 2003 statements depends on whether Mr. Perry requested an attorney during the December 5, 2003 afternoon interrogation. This is so because if Mr. Perry requested an attorney, then all statements obtained during subsequent interviews initiated by law enforcement (including the December 8, 2003 interview) are inadmissible. "Interrogation of an accused must cease once the accused invokes the right to counsel." Clayton v. Gibson, 199 F.3d 1162, 1172 (10th Cir. 1999) (citing Miranda v. Arizona, 384 U.S. 436, 474 (1966)); see also Moran v. Burbine, 475 U.S. 412, 423 n.1 (1986) ("When a suspect *has* requested counsel, the interrogation must cease, regardless of any question of waiver, unless the suspect himself initiates the conversation.") (emphasis in original); United States v. Alexander, 447 F.3d 1290, 1294 (10th Cir. 2006) ("If an individual expresses his desire to remain silent, all interrogation must cease.") (citing Michigan v. Mosley, 423 U.S. 96, 100 (1975)). "Nonetheless, an accused may be interrogated further if, after invoking the right to counsel, he voluntarily initiates further communication with the police and waives his right to counsel." Clayton, 199 F.3d at 1172 (citing Edwards v. Arizona, 451 U.S. 477, 484-85 (1981)); see also Alexander, 447

F.3d at 1294 (“[A] defendant—even if he has asserted the right to counsel—may choose to reinitiate contact with the police so long as the government does not coerce him into doing so.”) (citing Edwards, 451 U.S. at 484-85).

The December 5, 2003 afternoon interview was a custodial interrogation, as the United States concedes. (See U.S.’s Opp’n Mem. at 16.) And no Miranda warning was given.

The controlling issue is whether Mr. Perry requested an attorney during the interview. Certainly resolution of this factual issue centers around Mr. Perry’s credibility (in particular, his demeanor on the stand and the content of his testimony), but it also requires a review of the overall record. The court finds that, while it is a close question, the balance of the evidence in the record weighs in favor of Mr. Perry’s position that he did request an attorney.

In the end, the United States’s witnesses could not recall whether Mr. Perry requested an attorney. And although Investigator Perry said he was “very sensitive” to Miranda rights, the fact is that Mr. Perry did not receive a Miranda warning at the December 5, 2003 afternoon interview in which Investigator Perry participated.

Moreover, Mr. Perry unequivocally testified under oath that he did request an attorney. Many of the circumstances the United States points to in an effort to discredit Mr. Perry (e.g., his long-term convicted felon and prisoner status, the delays in his case, his failure as a pro se filer to raise the right-to-counsel issue in an earlier motion to suppress, his failure to raise other issues earlier in the case, and his addiction to chewing tobacco despite the prison’s rule against tobacco use) are not persuasive. As for the government’s evidence regarding Mr. Perry’s prison grievances (or lack thereof regarding the alleged harsh prison conditions), the evidence provided by the government was inconclusive regarding whether Mr. Perry actually lied on the stand about

the purportedly harsh conditions and about the grievance he allegedly filed with the prison regarding those conditions. For instance, the government's evidence does not support the government's position that Mr. Perry did not actually submit a grievance about the alleged shower incident⁵ to his prison guards. The evidence does not support the government's position that the alleged shower incident never occurred. And there is some question about whether the evidence of the prison grievance file is reliable. During final argument, the government withdrew part of its credibility argument regarding grievances because prison officials finally found the actual grievance at issue and it did not support the proposition for which it had been cited. In short, there is no effective rebuttal evidence to refute Mr. Perry's testimony.

Because the court concludes that Mr. Perry did request an attorney during the December 5, 2003 afternoon interview, the investigator-initiated interview on December 8, 2003 (conducted without counsel present) violated Mr. Perry's right to remain silent and his right to have counsel present during questioning. The fact that a Miranda warning was given on December 8, 2003 does not cure the problem.

The United States Supreme Court has held that an accused, "having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards, 451 U.S. at 484-85 (emphasis added). "If police initiate subsequent contact without the presence of counsel, [the

⁵Mr. Perry alleges that at some time between December 6, 2003, and December 8, 2003, prison guards left him naked in the shower for five and a half hours while the door to the outside prison yard was left open, exposing him to the cold December air.

defendant's] statement will be presumed involuntary, even where his statements would otherwise be deemed voluntary under traditional standards." Pickens v. Gibson, 206 F.3d 988, 994 (10th Cir. 2000) (emphasis added). According to the bright line rule stated in Edwards, reading a defendant his Miranda rights after he has asked for an attorney does not cure the problem created when police, rather than the defendant, re-initiate contact. United States v. Giles, 967 F.2d 382, 386 (10th Cir. 1992); United States v. Kelsey, 951 F.2d 1196, 1198-99 (10th Cir. 1991) (citing Arizona v. Roberson, 486 U.S. 675, 686 (1988)).

Because the prison investigators initiated the December 8, 2003 interview and did not provide legal counsel for Mr. Perry during the questioning, the statements made by Mr. Perry during the December 8, 2003 interview must be suppressed.

January 12, 2004 Statements

But the circumstances of the January 12, 2004 interview are different. Mr. Perry initiated the interview and agreed to questioning. See United States v. Glover, 104 F.3d 1570, 1581 (10th Cir. 1997) (allowing law enforcement to take statement of suspect who invoked right to counsel but then re-initiated discussion). If the accused initiates further communication, the investigators may question him outside the presence of counsel if his waiver of rights was knowingly and intelligently given, and was voluntary. Id. Such is the case here.

Mr. Perry's waiver of Miranda rights was knowingly and intelligently given. Mr. Perry's Miranda rights were clearly explained. He signed a valid waiver of those rights. See United States v. Hack, 782 F.2d 862, 866 (10th Cir. 1986) ("An express written or oral statement or waiver by a defendant of his right to remain silent or of the right to legal assistance of counsel, though not conclusive, is 'usually strong proof of validity of that waiver.'" (quoting North

Carolina v. Butler, 441 U.S. 369, 373 (1979)). He did not request an attorney during the January 12, 2004 interview. And his actions and testimony demonstrate that he understands his rights and knows how to invoke them when he desires to do so.

There is nothing in the record to show that he was coerced into signing the waiver. Even assuming there were harsh conditions on December 8, 2003, so much time passed (more than one month) that the circumstances were no longer the same. The only circumstance remaining from December 8, 2003, was that Mr. Perry was confined in Uinta 1, a maximum security block of the prison. And that is not enough to show coercion. “A defendant’s confession is involuntary if the government’s conduct causes the defendant’s will to be overborne and ‘his capacity for self-determination critically impaired.’” United States v. McCullah, 76 F.3d 1087, 1101 (10th Cir. 1996) (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973)). Based on the record, Mr. Perry was coherent and in control of his faculties during the January 12, 2004 interview. And there is no evidence that Investigator Perry did anything that could be construed as coercive.

Mr. Perry also contends that even if the statements are otherwise admissible, they should be suppressed based on the alleged bad faith conduct of the prison investigators. To support his contention, he cites to Missouri v. Seibert, 542 U.S. 600 (2004), and points to “repeated violations of Miranda by officers trained especially in interrogating inmates,” (Def.’s Reply at 10-11), the allegedly coercive conditions of confinement, the failure to record all of the interviews, and the allegedly strategic behavior of questioning first, obtaining a confession, and then administering Miranda warnings. The court disagrees with Mr. Perry’s contention.

This case is distinguishable from Seibert. In Seibert, the United States Supreme Court held that post-Miranda-warning statements obtained through the “technique of interrogating in

successive, unwarned and warned phases” were inadmissible because the interrogation technique violated Miranda. Seibert, 542 U.S. at 609, 617. In that case, the police knowingly employed a “question-first, warn-later” strategic interrogation practice. The “warned phase of questioning proceeded after a pause of only 15 to 20 minutes, in the same place as the unwarned segment.” Id. at 616. The Court disapproved of mid-stream warnings that came during one interrogation session, or successive interrogations “close in time and similar in content.” Id. at 613. Justice Kennedy, in his concurring opinion, noted that “a substantial break in time and circumstances between the prewarning statement and the Miranda warning may suffice in most circumstances” to cure any taint that may have lingered during the pre-warning phase. Id. at 622. See also United States v. Carrizales-Toledo, 454 F.3d 1142, 1152 (10th Cir. 2006) (holding that time lapse between the first and second interrogation – a matter of hours, if not minutes, in the same day – along with change in interrogating officers and change in interrogation location sufficiently broke up the two distinct questioning sessions so that no Miranda violation occurred).

Here, the time lapse between the date of the pre-warning statements (December 12, 2003) and the warned statements (January 12, 2004) was significant. And the investigators were different. Captain Green and another officer questioned Mr. Perry on December 12, 2003, whereas Investigator Perry was the questioning officer on January 12, 2004. Plus, there is no indication in the record that the investigators’ failure to give Miranda warnings during some of the interviews was anything but inadvertent (unlike the deliberate two-step interrogation at issue in Seibert).

It is an unwarranted extension of Miranda to hold that a simple failure to administer the warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect’s ability to exercise his free

will, so taints the investigatory process that a subsequent voluntary and informed waiver is ineffective for some indeterminate period.

Oregon v. Elstad, 470 U.S. 298, 309 (1985). See also Moran v. Burbine, 475 U.S. 412, 432-34 (1986) (holding that although there might be facts where police deception would rise to the level of a due process violation requiring suppression based on bad faith, “on these facts [the police withheld information from suspect about attorney trying to contact him during questioning], the challenged conduct falls short of the kind of misbehavior that so shocks the sensibilities of civilized society as to warrant a federal intrusion into the criminal processes of the States”). The facts of this case, in combination with the case law, does not support the remedy that Mr. Perry seeks.

Given the totality of the circumstances, the court declines to suppress the statements made during the January 12, 2004 interview.

United States’s Motion to Supplement Record

On September 9, 2006, after the final argument on the Defendant’s Motion to Suppress, the United States filed a Motion to Supplement the Record with an affidavit of Sergeant Michael Feickert or with further live testimony in supplemental proceedings. Sergeant Feickert testifies regarding the treatment of Mr. Perry in the Uinta 1 facility.

The government had ample opportunity to present Sergeant Feickert’s testimony during the briefing of the Motion to Suppress. No good cause has been shown why the government should now be allowed to supplement the record with Sergeant Feickert’s testimony. Moreover, the information would not necessarily change the outcome. Accordingly, the Motion to Supplement is DENIED.

ORDER

For the foregoing reasons, Defendant Clifford Perry's Motion to Suppress is GRANTED IN PART AND DENIED IN PART. The statements made by Mr. Perry on December 8, 2003, are hereby suppressed. The statements made by Mr. Perry on January 12, 2004, are not suppressed.

And the United States's Motion to Supplement the Record (Dkt # 220) is DENIED.

SO ORDERED this 13th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

RICHARD D. BISSELL (10339)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorney for Salt Lake Community College
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

FILED
U.S. DISTRICT COURT
2006 SEP 13 P 2:28
CLERK OF DISTRICT COURT
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JIHAD AL-ALI,

Plaintiff,

vs.

SALT LAKE COMMUNITY COLLEGE,

Defendant.

ORDER

Case No.2:04CV00547 DS

Judge David Sam

This matter, having been brought before the Court upon the Defendant's Motion for Enlargement of Time to file its own Motion for Summary Judgment and to Respond to Plaintiff's Motion for Summary Judgment, and the Court having reviewed the record and being otherwise sufficiently advised, it is hereby ORDERED and ADJUDGED as follows:

1. The Defendant's Motion for Enlargement of Time to Respond to the Plaintiff's Motion for Summary Judgment is GRANTED;
2. The Defendant shall respond to Plaintiff's Motion for Summary Judgment by September 28, 2006, as well as file its own dispositive motion concurrently therewith.

So ordered this 13 day of September 2006.



JUDGE DAVID SAM
United States District Court, District of Utah

PREPARED BY:

TO BE ENTERED:

/s/ Richard D. Bissell
RICHARD D. BISSELL
Assistant Utah Attorney General
Attorney for Defendant

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>RANDALL DANJANOVICH, an individual, Plaintiff,</p> <p>vs.</p> <p>TEK CORP, et al., Defendants.</p>	<p>MEMORANDUM DECISION DENYING DEFENDANT’S MOTION FOR EXTENSION OF TIME IN WHICH TO FILE NOTICE OF APPEAL</p> <p>Case No. 2:04-cv-623 TS</p>
---	--

On Aug. 4, 2006, judgment was entered against Defendants.¹ Pursuant to Fed. R. App. P. 3 and 4(a)(1), Defendants were required to file any notice of appeal to this Court by Sept. 3, 2006. Defendants failed to do so. On September 5, 2006, Defendants filed a Motion for Extension of Time to File Notice of Appeal under Fed. R. App. P. 5(A).² Defendants argue that their efforts to obtain funding to satisfy the Aug. 4, 2006 judgment against them, along with

¹Docket No. 256.

²Docket No. 259.

corresponding bank activity which is beyond their control, constitute either good cause or excusable neglect for not timely filing the notice of appeal.

Fed. R. App. P. 5(A) provides that the district court may extend the time to file a notice of appeal upon a party's showing of excusable neglect or good cause.³ ““Good cause comes into play in situations in which there is not fault—excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.””⁴ While Defendants’ ability to obtain funding to satisfy judgment may or may not be within its control, this matter has nothing to do with Defendants’ ability to file notice of appeal. Rather, it appears as though Defendants are arguing that they have not yet decided whether to appeal, as that decision is contingent upon whether they are able to satisfy the current judgment against them. This is not good cause for extension.⁵

Defendants’ argument as to excusable neglect also fails. “Whether a party’s neglect is excusable ‘is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’”⁶ “Such circumstances include ‘[1] the danger of prejudice to the [nonmoving party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control

³Fed. R. App. P. 5(A)(ii).

⁴*United States v. Torres*, 372 F.3d 1159, 1161 n.1 (10th Cir. 2004) (quoting *Bishop v. Corsentino*, 371 F.3d 1203, 1206-07 (10th Cir. 2004)).

⁵*See Bishop*, 371 F.3d at 1206-07 (upholding district court’s denial of extension to party who had not “decided yet whether to pursue an appeal”).

⁶*Torres*, 372 F.3d at 1162 (quoting *Pioneer Investment Services Co. v. Brunswick Associates Ltd. P’ship*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993)).

of the movant, and [4] whether the movant acted in good faith.”⁷ Of these factors, “fault in the delay [is] perhaps the most important single factor . . . in determining whether neglect is excusable.”⁸

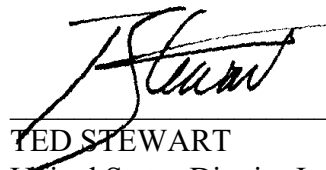
In this case, even assuming that all of the other factors weigh in Defendants favor, it is clearly Defendants’ fault for not timely filing the notice of appeal, and this Court cannot find excusable neglect. Defendants’ reason for the delay is unpersuasive as they had complete control over filing of the notice. Moreover, Defendants’ ability to satisfy the judgment is not sufficiently related to their ability to file a notice of appeal to merit a finding of excusable neglect.

It is therefore

ORDERED that Defendants’ Motion for Extension of Time to File Notice of Appeal (Docket No. 259) is DENIED.

DATED September 12, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", is written over a horizontal line.

TED STEWART
United States District Judge

⁷*Id.*

⁸*Id.* at 1163 (quotation and citation omitted).

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 2:28

KATHRYN FADEN,

)

Case No. 2:04CV860 DS

Plaintiff,

)

vs.

)

SAM'S WEST, INC. dba SAM'S CLUB, a)
division of Wal-Mart, Inc.

)

ORDER

Defendant.

)

Based upon the stipulation of the parties and for good cause appearing,

IT IS HEREBY ORDERED:

That the Final Pre-Trial Conference and Trial date are continued pending the bankruptcy
court's approval of the parties' settlement agreement.

DATED this 13th day of September, 2006.

BY THE COURT:



DAVID SAM
SENIOR JUDGE
U.S. DISTRICT COURT

MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JUDGE: Hon. David Sam

COURT REPORTER: Mindi Powers

COURTROOM DEPUTY: Michael R. Weiler

INTERPRETER: None

RECEIVED

SEP 05 2006

OFFICE OF JUDGE
DAVID SAM

Approved By: *DS 9/12/06*

CASE NO. 5-CR-538 DS

USA v. William Richard Mansell

APPEARANCE OF COUNSEL

Pla Loren Washburn, AUSA
Dft Rebecca Hyde, FPD
USPO Matthew Erickson

DATE: September 1, 2006, 10:30 AM

MATTER SET: Change of Plea

(23 mins)

DOCKET ENTRY:

Dft pres. Dft sworn & questioned. Rights, max/min penalties explained. Stmt in Adv of POG signed & filed with the Crt. Dft pleads guilty to Ctn 2 of the Indictment. Remaining Ctns1 & 3-28, to be dismissed at time of sentencing. Crt finds that there is a factual basis for the charge & that the plea is freely & voluntarily given. Crt adjudges the dft guilty & orders presentence report. Crt schedules:

- Sentencing set 12/8/2006, at 3:00 PM.

Dft to remain on conditions of release.

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT 2006 SEP 13 A 9 57

DISTRICT OF UTAH, CENTRAL DIVISION

DISTRICT OF UTAH

CLERK OF COURT

UNITED STATES OF AMERICA,

:

2:05 CR 785 TS

Plaintiff,

:

ORDER GRANTING LEAVE TO
DISMISS INDICTMENT

vs.

:

HAYDEE LIZETTE SOLARTE,

:

Defendant.

Upon motion of the United States, and good cause appearing therefore, the Court grants leave to the United States Attorney, pursuant to Rule 48(a), Federal Rules of Criminal Procedure, to file a dismissal of the Indictment in the above-titled case as against HAYDEE LIZETTE SOLARTE without prejudice.

DATED this 12th day of September, 2006.

BY THE COURT:



TED STEWART, Judge
United States District Court

RECEIVED

BRETT L. TOLMAN, United States Attorney (#8821)
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SEP 13 2006

OFFICE OF
JUDGE TENA CAMPBELL

2006 SEP 13 P 12:28

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No:	2:05-cr-00805-TC
	:		
Plaintiff,	:	SCHEDULING ORDER	
	:		
vs.	:	Judge Tena Campbell	
	:		
DENNIS EVANSON, et al.,	:		
	:		
Defendants.	:		
	:		

A status conference was held on Thursday, September 7th, 2006. The Defendants were represented by counsel of record, who waived the presence of the Defendants. The United States was also represented by counsel of record.

The Court scheduled a James hearing on Thursday February 1st, 2007. The Court scheduled argument on the remaining motions on Friday, February 2nd, 2007.

The Court ordered the parties to meet after the status conference to determine a

briefing schedule for the outstanding motions. Pursuant to the agreements reached at that meeting between the parties, the Court now sets the following briefing schedule and other deadlines IT IS HEREBY ORDERED that:

On or before September 30, 2006, the United States will file responses to the following motions:

1. Defendant Taylor's motion to Sever
2. The Defendants' motions to dismiss the indictment and various counts within the indictment
3. The Defendants' motions to suppress evidence seized from two searches

The United States will also provide preliminary notice of evidence it intends to offer pursuant to Fed. R. Evid. 404(b) by September 30, 2006.

On or before November 15, 2006, the Defendants will reply to the government's responses.

On or before November 15, 2006, the government will identify witnesses who will testify to statements the government will seek to admit pursuant to Fed. R. Evid. 801(d)(2)(E).

On or before December 1, 2006, the government will submit a brief on the existence of the conspiracy for the purposes of the James hearing.

On or before January 15, 2006, the Defendants will submit responses to the government's brief on the existence of the conspiracy.

IT IS FURTHER ORDERED that a final pretrial conference will be held on April 2, 2007, at 2:30 p.m.

IT IS FURTHER ORDERED that the Court will not accept any negotiated pleas after April 15, 2007.

Finally, IT IS ORDERED that the trial in this matter will commence on April 30, 2007 at 8:30 a.m.

DATED this 13 day of September, 2006.

BY THE COURT

A handwritten signature in black ink, appearing to read "Tena Campbell", is written over a horizontal line.

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 SEP 13 P 12:29

DISTRICT OF UTAH

DEPUTY CLERK

UNITED STATES OF AMERICA,
Plaintiff,

vs.

SHIELA DIANNE SWAIN,
Defendant.

ORDER

Case No. 2:05 CR 896 TC

Before the court is defendant Shiela Dianne Swain's Motion for Early Termination of Supervised Release. The court having reviewed the motion and supporting memorandum, having consulted with Mr. Ron Cushing of the United States Probation Office, and given the fact that Ms. Swain has not yet completed one year of supervision,

IT IS HEREBY ORDERED THAT defendant's motion is DENIED.

DATED this 13 day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

Central

District of

Utah

FILED
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE 13 P 12:52

V.

Layton Fredrick Funk

Case Number: DUTX 2:05CR000930-001

USM Number: 10683-023

Wendy Lewis

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Superseding Misdemeanor Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 113(a)(5)	Sexual Abuse of a Minor While in the Special Aircraft		1
Jurisdiction of the United States			

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) One of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/7/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Judge

Title of Judge

9-12-2006

Date

DEFENDANT: Layton Fredrick Funk
CASE NUMBER: DUTX 2:05CR000930-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

7 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at FCI Herlong, CA.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 10/20/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Layton Fredrick Funk
CASE NUMBER: DUTX 2:05CR000930-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Layton Fredrick Funk
CASE NUMBER: DUTX 2:05CR000930-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in mental treatment and counseling, with an evaluation, as deemed appropriate by the USPO.
2. The defendant shall maintain full-time, verifiable employment or be actively seeking employment, or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.

DEFENDANT: Layton Fredrick Funk
CASE NUMBER: DUTX 2:05CR000930-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 50.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

TOTALS	\$	<u>0.00</u>	\$	<u>0.00</u>
---------------	----	-------------	----	-------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Layton Fredrick Funk
CASE NUMBER: DUTX 2:05CR000930-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 50.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 4 - 10
are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CLARE DOLL CHASE,

Plaintiff,

vs.

CEDAR CITY CORPORATION, et al.,

Defendants.

ORDER & MEMORANDUM DECISION

Case No. 2:05 CV 293

Plaintiff Clare Doll Chase was arrested for disorderly conduct and interfering with an arresting officer after she challenged the right of cable workers to be in her backyard. Ms. Chase filed this lawsuit approximately two years later, alleging that she was discriminated against in violation of the Americans with Disabilities Act, was subjected to excessive force, and was illegally arrested. Ms. Chase also alleged a cause of action for trespass, challenging the right of the cable company workers to be in her backyard the day the altercation took place.

The defendants in this suit include Cedar City, Utah, Cedar City Police Chief Ben Allinson, and Officer Allen Harwood (collectively "Cedar City"). Ms. Chase also named the cable workers themselves as defendants, as well as multiple communications companies. Ms. Chase claims that those companies are responsible for the alleged trespass of the cable workers under the doctrine of respondeat superior. Now before the court is Cedar City's Motion for Summary Judgment and Defendants Southwestern Communications, Inc. and TVS Systems, Inc.'s Motion for Judgment on the Pleadings.

Cedar City, in its motion, argues that it has not violated any laws nor deprived Ms. Chase

of her constitutional rights. Accordingly, Cedar City asserts that it is entitled to summary judgment on all of Ms. Chase's claims.¹ But the lack of discovery in this matter, coupled with the reality that the parties dispute the core facts that form the basis for Ms. Chase's claims, precludes the entry of summary judgment at this time.

Southwestern and TVS, in their motion for judgment on the pleadings, assert that the allegations in Ms. Chase's complaint are insufficient to state a claim of trespass against them and that dismissal of that claim is therefore appropriate. During oral argument, counsel for Ms. Chase conceded that the complaint fails to sufficiently allege a connection between the cable workers and Southwestern and TVS, a deficiency that forecloses Ms. Chase's ability to recover under the doctrine of respondeat superior. Accordingly, Ms. Chase's trespass claim against Southwestern and TVS is dismissed without prejudice.

Background

In support of its motion for summary judgment, Cedar City submitted the affidavits of the two officers that were involved in Ms. Chase's arrest and an affidavit from the chief of the Cedar City Police Department, Chief Allinson. In opposition, Ms. Chase submitted her own affidavit as well as an affidavit from her sister. The parties have filed evidentiary challenges to the materials submitted by each other. Accordingly, before detailing the facts giving rise to this lawsuit, it is necessary to first determine what evidence is properly before the court.

I. Motions to Strike

A. Officer Harwood's Police Report

Ms. Chase claims that the court should disregard a police report attached to Officer

¹The court previously dismissed Ms. Chase's state claims of malicious prosecution, intentional infliction of emotional distress, and trespass against Cedar City, holding that those claims were barred by governmental immunity. (See Order & Memo. Decision 3 (dkt. #15).)

Harwood's affidavit on hearsay grounds. Ms. Chase is correct that police reports are often excluded from the evidentiary record. See Fed. R. Evid. 803, Comment c ("Police reports have generally been excluded except to the extent to which they incorporate firsthand observations of the officer."). But it appears that the vast majority of the challenged police report contains the firsthand observations of Officer Harwood, which are admissible. See id.; see also United States b. Pazsint, 703 F.2d 420, 424 (9th Cir. 1983) ("It is well established that entries in a police report which result from the officer's own observations and knowledge may be admitted but that statements made by third persons under no business duty to report may not.") (cited with approval in Walker v. Oklahoma City, 203 F.3d 837 (10th Cir. 2000), available at No. 98-6457, 2000 WL 135166, at *8 (10th Cir. Feb. 7, 2000)). Accordingly, it is appropriate to rely on the firsthand observations documented by Officer Harwood in his police report as necessary to provide context for the statements made by Officer Harwood in his affidavit. Further, the court's resolution of Cedar City's summary judgment motion is not dependent upon any hearsay statements contained in Officer Harwood's police report. And, therefore, Ms. Chase's motion to strike hearsay statements from the record is moot.

B. Affidavits of Ms. Chase and Anne Tooman

Cedar City moves to strike the affidavit of Ms. Chase's sister, Anne Tooman, in its entirety, arguing that the affidavit is irrelevant because it is confined to events for which Ms. Chase is not seeking recovery. Cedar City also moves to strike portions of Ms. Chase's affidavit, claiming that many of Ms. Chase's statements are conclusory and irrelevant. A review of Ms. Tooman's affidavit shows that it contains no material information that differs from that offered in Ms. Chase's affidavit. Accordingly, the court is able to rely solely on Ms. Chase's affidavit when ruling on Cedar City's summary judgment motion. Because the court has no need to

consider Ms. Tooman's affidavit, the motion to strike that affidavit is moot.

Additionally, although portions of Ms. Chase's affidavit are objectionable, the majority of her affidavit is sound and the court is able to identify and disregard conclusory legal statements. Cedar City also challenges portions of Ms. Chase's affidavit on relevancy grounds. But because the conclusion of the court is not affected by the presence of the statements challenged by Cedar City as irrelevant, Cedar City's motion to strike those statements is moot.

II. Factual Background

Officer Harwood, in his sworn affidavit, states that he was at Ms. Chase's house on the day the events underlying this lawsuit occurred to ensure that Raul Torres and Mr. Torres's coworker, Ernesto Vargas, were able to finish a task within a utility easement located in Ms. Chase's backyard. The parties' testimony diverges significantly concerning the details of what happened at Ms. Chase's home, but it is undisputed that Ms. Chase confronted the men in her backyard, questioning their right to be on her property.

Officer Harwood maintains that Ms. Chase ran toward the workers and that he was forced to physically restrain her by grabbing her arm and placing her in a "twist lock." Officer Harwood states that he spoke with Ms. Chase several times throughout the encounter and informed her that Mr. Torres and Mr. Vargas were performing work within a utility easement and therefore had a right to be on the property. Officer Harwood claims that he asked Ms. Chase to return to her home to avoid possible arrest. Despite that warning, Officer Harwood asserts that Ms. Chase continued to accost the workers and also continued her attempts to get past him, apparently to physically confront the workers. Officer Harwood claims that he ultimately had no choice but to arrest her.

Ms. Chase's testimony paints a different picture. According to Ms. Chase, some time

before her arrest, a cable company representative informed her that a cable construction project was planned for her neighborhood. Nevertheless, the representative indicated that cable workers would not need access to her property. Accordingly, when she saw the workers in her backyard, she went outside and told Officer Harwood to remove the workers from her property. Ms. Chase asserts that she was fully cooperative and compliant with Officer Harwood throughout the encounter and that she never tried to get past Officer Harwood in an attempt to reach the cable workers. She also claims, contrary to the account of Officer Harwood, that she was never informed that she should return to the house or face possible arrest.

Despite the strikingly different versions of events put forward by the parties, it is undisputed that Officer Harwood used physical force against Ms. Chase during the confrontation. Officer Harwood admits that he grabbed Ms. Chase's arm, used a twist lock, and later placed her in handcuffs and put her in the back of his patrol car. Once in the patrol car, Ms. Chase expressed concern about two children that were in her home and requested that Officer Harwood ensure that the children were looked after. The parties disagree about the length of time the children were left alone. Ms. Chase states that Officer Harwood refused to take any action to address the situation and that the children were unattended for approximately forty-five minutes to an hour. Officer Harwood states that Officer Travis Carter arrived on the scene about two minutes after Ms. Chase's arrest and that when Officer Carter approached the house, Ms. Chase's sister was already there, caring for the children.

At the time these events unfolded, Ms. Chase's police file contained an "alert code" indicating that she was a mental patient. According to Officer Harwood's sworn testimony, he was unaware of the alert code when he arrested Ms. Chase. There is no evidence that indicates how or when the mental patient designation was made. The classification has since been

changed to indicate that Ms. Chase exhibits erratic behavior.

Analysis

I. Claims Against Cedar City

Ms. Chase claims that because Cedar City misclassified her as a mental patient, she was discriminated against in violation of the ADA. She also asserts that Cedar City violated her constitutional rights, contending that she was arrested without probable cause and subjected to excessive force. Although Ms. Chase asserts that Cedar City's actions deprived her of her Fourth and Fourteenth Amendment rights, the Fourth Amendment alone governs the analysis of her claims. See Taylor v. Meacham, 82 F.3d 1556, 1560 (10th Cir. 1996) ("In Albright v. Oliver, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994), a plurality of the Supreme Court held that the Fourth Amendment governed 'pretrial deprivations of liberty.' Id. at ----, 114 S.Ct. at 813. Fourteenth Amendment substantive due process standards have no applicability."); see also Graham v. Connor, 490 U.S. 386, 396 (1989) ("[A]ll claims that law enforcement officers have used excessive force . . . in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard."). Accordingly, the court will only consider the Fourth Amendment when analyzing Ms. Chase's constitutional claims.

A. Summary Judgment Standard

Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670

(10th Cir. 1998). The court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

B. ADA Claim

Ms. Chase claims that she was discriminated against because Officer Harwood treated her differently than he would another individual based on the presence of an alert code that identified Ms. Chase as a mental patient. Ms. Chase argues that she is protect by the ADA because that act protects not only impaired individuals, but also individuals that are considered to have an impairment. See 28 C.F.R. § 35.104(4) ("The phrase regarded as having an impairment means . . . (iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment."). According to Ms. Chase, the mental patient alert code indicates that Cedar City treated her as an individual with an impairment. (See Plf.’s Memo. of Points & Auths. In Opp’n to Cedar City’s Mot. for Summ. J. 14 (dkt. # 47) (“Since Cedar City’s own documents have labeled Plaintiff as a mental patient, the natural and logical inference is that she is being treated as having . . . [an] impairment by the public entity.”).)

Although less than clear, it appears that Ms. Chase bases her ADA claim on 28 C.F.R. § 35.130(a). That regulation states that an individual covered by the ADA cannot be denied the “benefits of the services, programs or activities of [a] public entity” or otherwise “be subjected to discrimination by any public entity.” Id. Cedar City contends that summary judgment on Ms. Chase’s ADA claim is appropriate because, although Ms. Chase “alleges that the police department provides ‘services’ and that she was discriminated against in the provision of those services[,] [s]he fails . . . to identify with any specificity the services or the discrimination.” (Memo. in Supp. of Cedar City’s Mot. for Summ. J. 15 (dkt. #27).)

A review of Ms. Chase’s complaint and her memorandum opposing summary judgment indicates that Ms. Chase believes the existence of the mental patient alert code motivated Officer Harwood’s actions leading up to and including her arrest. (See, e.g., Complaint ¶ 47 (dkt. #1) (“Upon information and belief, one of the reasons the officers overreacted in their . . . dealings with Plaintiff was the police department’s misinformation and mislabeling of Plaintiff as a mental patient prior to their arriving on her property.”); id. ¶ 52 (“Defendants cannot deny proper services to Plaintiff on the basis of fear or misinformation about the disability.”); Plf.’s Memo. of Points & Auths. In Opp’n to Cedar City’s Mot. for Summ. J. 15 (dkt. #47) (“Plaintiff does not believe the actions of Officer Harwood were reasonable or logical. Once she became alerted to [the existence of the mental patient alert code], she believed that unusual code was consistent with the officers’ treatment of her and with the officer having advanced notice of such information”).)

Ms. Chase states that Cedar City indicated in its interrogatory answers that if Officer Harwood entered Ms. Chase’s name on his computer before arriving at her address, the mental patient alert code would have been displayed. But Officer Harwood asserts in his sworn affidavit that he was not aware of the alert code and that the alert code did not influence any of the decisions he made before arresting Ms. Chase.

“[S]ummary judgment should not be based on the deposition or affidavit of an interested party . . . as to facts known only to him” because in such a situation “demeanor evidence might serve as real evidence to persuade a trier of fact to reject his testimony.” Madison v. Deseret Livestock Co., 574 F.2d 1027, 1037 (10th Cir. 1978) (citing Nat’l Aviation Underwriter’s, Inc. v. Altus Flying Serv., Inc., 555 F.2d 778, 784 (10th Cir. 1977)). Further, “[u]nless the moving party can demonstrate his entitlement beyond a reasonable doubt, summary judgment must be

denied.” Conway v. Smith, 853 F.2d 789, 792 n.4 (10th Cir. 1988) (citing Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980)).

As the record now stands, the court is unable to determine whether Ms. Chase’s ADA claim has merit. Cedar City asserts that it has no information regarding the entry of the mental patient alert code and it has not presented any policy that was in effect before Ms. Chase’s arrest that addresses the use of alert codes. As the moving party, it is Cedar City’s burden to establish beyond a reasonable doubt that it is entitled to summary judgment. The evidence Cedar City provides is insufficient to meet that heavy burden. Accordingly, Cedar City’s motion for summary judgment on Ms. Chase’s ADA claim must be denied at this time.

C. Ms. Chase’s Constitutional Claims

Ms. Chase asserts that Cedar City violated her constitutional rights by wrongfully arresting her and subjecting her to excessive force. The parties’ briefs also contain argument addressing malicious prosecution, but, as Cedar City correctly notes, it is uncertain whether Ms. Chase is pursuing a malicious prosecution claim under § 1983.

In response to Ms. Chase’s constitutional claims, Cedar City argues that it is entitled to summary judgment on qualified immunity grounds. The qualified immunity doctrine “protects public officials performing discretionary functions unless their conduct violates ‘clearly established statutory or constitutional rights of which a reasonable person would have known.’” Johnson v. Martin, 195 F.3d 1208, 1216 (10th Cir. 1999) (internal citations omitted). When a claim of qualified immunity is raised in the context of a motion for summary judgment, the court, viewing the evidence in a light most favorable to the nonmoving party, must first determine whether the plaintiff has sufficiently asserted the violation of a constitutional right. Mimics, Inc. v. Village of Angel Fire, 394 F.3d 836, 841 (10th Cir. 2005). Then, if the plaintiff

has done so, the court must determine whether the asserted right was clearly established at the time the defendant acted. Id. at 841-42. “When evaluating a qualified immunity defense, after identifying the constitutional right allegedly violated, courts must determine whether the conduct was objectively reasonable in light of clearly established law at the time it took place.” Pierce v. Gilchrist, 359 F.3d 1279, 1297 (10th Cir. 2004) (emphasis added). “Requiring the law to be clearly established provides defendants with ‘fair warning’ that their conduct is unconstitutional.” Mimics, 394 F.3d at 842 (quoting Hope v. Pelzer, 536 U.S. 730, 739-40 (2002)). “The law is clearly established when a Supreme Court or Tenth Circuit decision is on point, or if the clearly established weight of authority from other courts shows that the right must be as plaintiff maintains.” Roska v. Peterson, 328 F.3d 1230, 1248 (10th Cir. 2003).

To determine whether a right is clearly established, the Supreme Court recently noted, “its contours must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has been held unlawful, but it is to say that in light of pre-existing law, the unlawfulness must be apparent.” Hope, 536 U.S. at 739. Put another way, the inquiry is “whether the law put officials on fair notice that the described conduct was unconstitutional.” Pierce, 359 F.3d at 1298. Importantly, the qualified immunity standard “gives ample room for mistaken judgments” by protecting “all but the plainly incompetent or those who knowingly violate the law.” Malley v. Briggs, 475 U.S. 335, 341, 343 (1986) (citing Harlow v. Fitzgerald, 475 U.S. 800 (1982)). A showing of negligence, even if it is gross negligence, is not sufficient to establish liability under 42 U.S.C. § 1983. Johnson, 195 F.3d at 1219. Even on summary judgment, Ms. Chase bears the burden of establishing that the Cedar City violated a clearly established right. See Jantz v. Muci, 976 F.2d 623, 627 (10th Cir. 1992) (“A defendant

government official need only raise the qualified immunity defense to shift the summary judgment burden to the plaintiff.”).

1. The Arrest

"The rule that arrests must be supported by a warrant or probable cause is well established." Fuerschbach v. Southwest Airlines Co., 439 F.3d 1197, 1205 (10th Cir. 2006) (citing Dunway v. New York, 442 U.S. 200, 212 (1979)). Here, the parties dispute whether Ms. Chase behaved such that Officer Harwood possessed probable cause to arrest her.

Officer Harwood insists that he arrested Ms. Chase for disorderly conduct and interfering with an arresting officer after she verbally accosted the cable workers, and made multiple attempts to reach the workers--presumably an action that would have transformed the encounter into a physical confrontation but for Officer Harwood's presence. But Ms. Chase claims that Officer Harwood grabbed her, forcibly handcuffed her, and arrested her even though she was fully cooperative, compliant, and calm throughout the encounter.

When the evidence is viewed in the light most favorable to Ms. Chase, it is apparent that she has successfully submitted evidence supporting the conclusion that she was arrested without probable cause. It is also beyond dispute that her right to be free from an arrest unsupported by probable cause or a warrant was clearly established at the time of her arrest. See id. Because the parties dispute whether Ms. Chase's behavior was severe enough to justify her arrest, it is inappropriate to enter summary judgment on this issue.

2. Excessive Force

"[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." Graham, 490 U.S. at 396. Here, Ms. Chase claims that Officer Harwood used excessive force in effecting her arrest because

her arrest was unlawful and therefore Officer Harwood was not justified in using any force against her. (See, e.g., Plf.’s Memo. of Points & Auths. In Opp’n to Cedar City’s Mot. for Summ. J. 19 (dkt. #47) (“When the three-part inquiry [applicable to excessive force claims] is applied to the circumstances of Plaintiff’s arrest, it becomes clear the arrest was unreasonable and summary judgment is inappropriate.” (emphasis added))).)

Officer Harwood states that he grabbed Ms. Chase’s arm and put her in a “twist lock”² after she attempted to reach the cable workers. A short time later, he placed Ms. Chase in handcuffs and put her in the back of his patrol car. It is evident that the very actions that potentially support Officer Harwood’s arrest of Ms. Chase also support the use of some degree of force to effect that arrest. But before it is possible to evaluate the appropriateness of the force used by Officer Harwood, it is necessary to determine the facts that supposedly made the application of force necessary. As discussed, those facts are disputed. Given the current state of the record, Cedar City’s motion for summary judgment on Ms. Chase’s claim of excessive force must be denied.

3. Malicious Prosecution

In the Tenth Circuit, state law provides the starting point for a § 1983 claim of malicious prosecution. Erikson v. Pawnee County Bd. of County Com’nrs, 263 F.3d 1151, 1154 (10th Cir. 2001). Under Utah law, there are four elements to a malicious prosecution claim, all of which must be proven: “(1) A criminal proceeding instituted or continued by the defendant against the plaintiff; (2) termination of the proceeding in favor of the accused; (3) absence of probable cause for the proceeding; (4) ‘malice,’ or a primary purpose other than that of bringing an offender to justice.” See Callioux v. Progressive Ins. Co., 745 P.2d 838, 843 (Utah Ct. App. 1987).

²There is no evidence in the record that identifies what a “twist lock” is or addresses the commonality of its use by law enforcement officers.

“Although the common law tort serves as an important guidepost for defining the constitutional cause of action, the ultimate question is always whether the plaintiff has alleged a constitutional violation.” Pierce v. Gilchrist, 359 F.3d 1279, 1289 (10th Cir. 2004); see id. at 1290 (rejecting the conclusion “that a plaintiff does not state a claim actionable under § 1983 unless he satisfies the requirements of an analogous common law tort”).

Cedar City primarily attacks Ms. Chase’s malicious prosecution claim by asserting that the arrest of Ms. Chase was supported by probable cause, which is fatal to a state law allegation of malicious prosecution. But, as noted, the Tenth Circuit has indicated that, in certain circumstances, a plaintiff may be able to pursue a § 1983 claim of malicious prosecution even without satisfying the elements of the analogous state law malicious prosecution claim. See id. at 1290. In any event, the existence of probable cause is directly tied to the disputed facts surrounding Ms. Chase’s arrest and even if Cedar City’s understanding of § 1983 malicious prosecution claims was correct, it would not necessarily be entitled to summary judgment on the ground that the prosecution was supported by probable cause.

But Ms. Chase’s malicious prosecution claim suffers from a greater defect than that identified by Cedar City: she has failed to allege that her prosecution resulted in a violation of her constitutional rights. Ms. Chase’s complaint contains a cause of action for malicious prosecution separate and apart from her § 1983 claim. The allegations underlying that malicious prosecution claim address only the elements of a state law malicious prosecution cause of action. The court previously dismissed that claim on governmental immunity grounds. (See Order & Memo. Decision 3 (dkt. #15) (“Defendants are immune from suit on Ms. Chase’s claims for intentional infliction of emotional distress, malicious prosecution, and trespass.” (emphasis added)).)

To adequately state a claim for § 1983 malicious prosecution, Ms. Chase must include some allegation that she suffered deprivation of a constitutional right as a result of the prosecution. See id. at 1289 (“Although the common law tort serves as an important guidepost for defining the constitutional cause of action, the ultimate question is always whether the plaintiff has alleged a constitutional violation.” (emphasis added)).

Ms. Chase’s complaint contains no allegations that her prosecution itself violated her constitutional rights. To the extent Ms. Chase is relying on her separately pleaded malicious prosecution claim as a sufficiently stated § 1983 malicious prosecution claim, the allegations are insufficient because they are confined to the elements of a state law cause of action and do not allege a constitutional violation. And, if Ms. Chase is relying on the allegations contained in her § 1983 cause of action, the complaint’s allegations are still insufficient because those allegations are confined to events directly involving her arrest and contain no mention of her prosecution.

In short, although Ms. Chase did plead a state cause of action for malicious prosecution, that claim has already been dismissed. Further, Ms. Chase’s complaint does not adequately allege a § 1983 malicious prosecution claim. Accordingly, absent the submission of an amended complaint, Cedar City cannot be held liable for malicious prosecution under § 1983.

4. Liability of Chief Allinson and Cedar City Corporation

Cedar City alleges that Ms. Chase has produced no evidence that could potentially result in the liability of either Chief Allinson or Cedar City Corporation. But it is apparent from the record that virtually no discovery has occurred regarding the potential liability of those parties.³

³After receiving interrogatory responses, Ms. Chase filed a motion to compel the production of more responsive information relating to police department’s use of alert codes. That motion was denied by United States Magistrate Judge Brooke C. Wells shortly before the court’s hearing on Cedar City’s motion for summary judgment. It is unclear from the record whether discovery has been conducted on issues other than the presence of the alert code.

In fact, although Ms. Chase did not file a separate motion seeking leave to conduct additional discovery, counsel for Ms. Chase did submit an affidavit referencing rule 56(f) of the Federal Rules of Civil Procedure and Ms. Chase argues in her memorandum opposing summary judgment that more discovery in this matter is necessary. Under proper circumstances, rule 56(f) allows for a party to pursue additional discovery that may aid the party's attempt to oppose a motion for summary judgment. Fed. R. Civ. P. 56(f).

“[D]iscovery is strongly favored before summary judgment is granted” Bryant v. O'Connor, 848 F.2d 1064, 1068 (10th Cir. 1988). The record now before the court is lacking in many respects. The only relevant evidence concerning Ms. Chase's claims against Chief Allinson and Cedar City Corporation is confined to Chief Allinson's three-page affidavit. Neither Chief Allinson nor Officer Harwood have been deposed and Ms. Chase may yet be able to discover additional evidence relevant to her claims. Given the uncertain state of the record, granting Chief Allinson and Cedar City Corporation summary judgment on Ms. Chase's claims is inappropriate at this time.

II. Insufficiency of Trespass Claim

Defendants Southwestern Communications, Inc. and TVS Systems, Inc. have filed a motion seeking dismissal of the trespass claim that Ms. Chase asserts against them. In response to that motion, Ms. Chase made no attempt to defend the sufficiency of her complaint, but rather moved for leave to file an amended complaint. That motion was denied by United States Magistrate Judge Brooke C. Wells. (See Order Denying Mot. for Leave to Amend 4 (dkt. #73).)

During oral argument before this court on Southwestern and TVS's motion for judgment on the pleadings, counsel for Ms. Chase conceded that the complaint originally filed in this is matter fails to adequately state a claim of trespass against Southwestern and TVS. As noted in

the memoranda filed by Southwestern and TVS, the original complaint fails to allege facts sufficiently linking the alleged trespassers to Southwestern and TVS, a deficiency that forecloses Ms. Chase's ability to recover under the doctrine of respondeat superior.

Given that the original complaint still governs this lawsuit, the court dismisses Ms. Chase's trespass claim against Southwestern and TVS without prejudice. Should Ms. Chase seek to reassert her trespass claim against Southwestern and TVS, the court will, at that time, address the propriety of her intention.

Conclusion

The critical facts underpinning this entire lawsuit are either incomplete or in dispute. All of Ms. Chase's claims implicate, in some fashion, the events that unfolded in her backyard on the day of her arrest. The parties present diametrically opposed versions of those events. Given the parties' dispute and the lack of evidence concerning the police department's use of the alert code system, summary judgment on Ms. Chase's claims is inappropriate at this time. The court notes, however, that Ms. Chase's complaint does not state a claim of malicious prosecution that can be redressed by § 1983.

Also, as conceded by Ms. Chase's counsel, the complaint that currently governs this dispute fails to adequately state a claim of trespass against Southwestern and TVN. Therefore, that claim must be dismissed.

Accordingly, Cedar City's Motion for Summary Judgment (dkt. #26) is DENIED. Southwestern and TVN's Motion for Judgment on the Pleadings (dkt. #38) is GRANTED, provided that the trespass cause of action is dismissed without prejudice. Plaintiff's Motion to Strike Exhibit A, Attached to Affidavit of Allen Harwood (dkt. #48) is DENIED as moot. Cedar

City's Motion to Strike Portions of the Affidavits of Clare Doll Chase and Anne Tooman (dkt. #62) is DENIED as moot.

SO ORDERED this 12th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

Proposed Order prepared by:

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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LEE ANN LUNT,	Civil No. 2:05-CV-0784-TC-BCW
Plaintiff,	
vs.	ORDER
METROPOLITAN LIFE INSURANCE COMPANY,	
Defendant.	Judge Tena Campbell Magistrate Judge Brooke C. Wells

On August 24, 2006, this Court conducted a hearing to consider Plaintiff Lee Ann Lunt's ("Lunt") [first] Motion to Require Disclosure and to Allow Discovery and Request for Sanctions¹ and Lunt's Second Motion to Require Disclosure and to Allow Discovery and Request for Sanctions ("Motion").² Plaintiff was represented by her counsel Loren Lambert and Kirsten Sparks. Defendant Metropolitan Life Insurance Company ("MetLife") was represented by its counsel James L. Barnett.

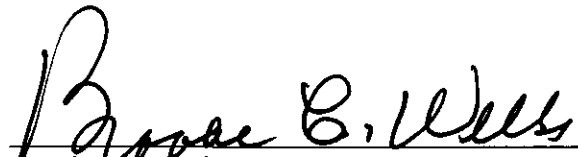
¹ See Motion, Docket No.: 4.

² See Motion, Docket No.: 16.

Having fully considered the parties' submissions and oral argument, the Court finds that the arbitrary and capricious standard of review applies to this case. The Court denies with prejudice Lunt's motions for disclosure, discovery and sanctions, except to the extent that MetLife relied upon an internal rule, guideline, protocol or other similar criterion in denying Lunt's benefits, then it must be provided to Lunt within thirty days of this Order. If MetLife did not rely upon an internal rule, guideline, protocol or other similar criterion in denying Lunt's benefits, then within thirty days of this Order MetLife must file an affidavit verifying that no such document exists.

SO ORDERED, this 11 day of September, 2006.

BY THE COURT:


Magistrate Judge Brooke C. Wells

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DISTRICT OF UTAH
**OFFICE OF
JUDGE TENA CAMPBELL**

BY: _____
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

NATIONAL INTERSTATE INSURANCE
COMPANY,

Plaintiff,

v.

JACKSON-ROCK SPRINGS, STAGES,
INC. dba LE BUS, a Wyoming Corporation;
MICHAEL RAY GREESON, an individual;
and FLEETWOOD SERVICES, INC., a
Utah Corporation,

Defendants.

JACKSON-ROCK SPRINGS STAGES,
INC., dba LE BUS,

Counterclaim Plaintiff,

v.

NATIONAL INTERSTATE INSURANCE
COMPANY and FLEETWOOD
SERVICES, INC.,

Counterclaim Defendants.

AMENDED SCHEDULING ORDER

Civil No. 2:05CV00794 TC

Judge Tena Campbell

The Court, on joint motion by the parties, and for good cause shown, hereby amends the February 10, 2006 Scheduling Order as follows. Any dates or deadlines not modified below remain in full force and effect.

1. **RULE 26(a)(2) REPORTS FROM EXPERTS**

a. **Plaintiff.** The deadline, originally set for September 29, 2006, is changed to **November 10, 2006.**

b. **Defendants.** The deadline, originally set for October 31, 2006, is changed to **December 15, 2006.**

c. **Counter reports.** 30 days after report.

2. **OTHER DEADLINES**

a. **Discovery to be completed by:**

i. **Fact discovery.** The deadline, originally set for August 18, 2006, is changed to **September 29, 2006.**

ii. **Expert discovery.** The deadline, originally set for December 15, 2006, is changed to **January 19, 2007.**

b. **Deadline for filing dispositive or potentially dispositive motions.** The deadline, originally set for January 26, 2007, is changed to **February 16, 2007.**

DATED this 12 day of September, 2006.

BY THE COURT:


Tena Campbell
United States District Court Judge

APPROVED AS TO FORM:

RICHARDS BRANDT MILLER & NELSON

/s/ Gary L. Johnson
Gary L. Johnson (4353)
Martha Knudson (8512)
Attorneys for National Interstate Insurance
(signature on file in Brett Johnson's office)

MORGAN MINNOCK RICE & JAMES L.C.

/s/ Jeffrey C. Miner
Jeffrey C. Miner (7258)
Attorneys for Jackson-Rock Springs Stages
(signature on file in Brett Johnson's office)

/s/ Roger A. Kraft
Roger A. Kraft
Attorney for Michael Ray Greeson
(signature on file in Brett Johnson's office)

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 12:28

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

BY: DEPUTY CLERK

ALLEN WOLFSON,

Plaintiff,

vs.

UNITED CONCERTS, et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:05 CV 798

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Magistrate Judge David O. Nuffer. Judge Nuffer is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 13th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

FILED
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

2005 SEP 12 P 3:14

CLERK OF DISTRICT COURT

F. DOUGLAS CANNON,
MARGARET LOUISE CANNON,
ALLAN ROBERT CANNON,

Plaintiffs,

v.

DONALD RUMSFELD, Secretary,
U.S. Department of Defense, *et al.*

Defendants.

Case No. 2:05-CV-00922-DB

**ORDER GRANTING
JOINT MOTION FOR
EXTENSION OF TIME FOR
PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER having come before the Court on the Parties' Joint Motion For
Extension of Time For Plaintiffs' Response to Defendants' Motion for Summary Judgment,

IT IS ORDERED that the Parties' Motion is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs shall file their opposition to the Defendants'
Motion for Summary Judgment on or before October 27, 2006. Defendants may file a reply
within 15 days of service of Plaintiffs' opposition.

DATED this 12th day of September, 2006.

BY THE COURT:



Dee Benson, District Judge
United States District Court

Bentley J. Tolk (6665)
PARR WADDOUPS BROWN GEE & LOVELESS
185 South State Street, Suite 1300
Salt Lake City, Utah 84111
Telephone: (801) 532-7840
Facsimile: (801) 532-7750

Attorneys for Defendant Life Insurance
Company of North America

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:14

CLERK OF COURT

CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

DIXIE A. PETERSEN,

Plaintiff,

vs.

BARD ACCESS SYSTEMS INC., BARD
ACCESS SYSTEMS INC. LONG TERM
DISABILITY PLAN, and LIFE
INSURANCE COMPANY OF NORTH
AMERICA,

Defendants.

**ORDER OF DISMISSAL
WITH PREJUDICE**

Case No. 2:05cv00942 DB


Judge Dee Benson

Based upon the Stipulated Motion for Dismissal with Prejudice, and good cause
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action and plaintiff's Complaint (and each and every cause of action contained therein) in this action are dismissed with prejudice, each party to bear its/her own attorneys' fees and costs.

DATED this 12th day of ~~August~~^{September}, 2006.

BY THE COURT:



The Honorable Dee Benson
U.S. District Court Judge

APPROVED AS TO FORM AND CONTENT:

BRIAN S. KING, ATTORNEY AT LAW

By: /s/ Brian S. King
Brian S. King
Nicole T. Durrant
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2006, a true and correct copy of the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** was served via electronic service on the following:

Brian S. King
Nicole T. Durrant
Attorney at Law
336 South 300 East, Suite 200
Salt Lake City, Utah 84111

/s/ Bentley J. Tolk

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
	:	CASE: # 2:05CV00998
Plaintiff,	:	
	:	
vs.	:	DEFAULT JUDGMENT AND
	:	ORDER OF FORFEITURE
\$3,294.00 in U.S. Currency,	:	
	:	
Defendant.	:	JUDGE: Paul G. Cassell
	:	

Plaintiff has filed a Motion for a Default Judgment and Order of Forfeiture and accompanying Memorandum in the above-captioned case against all persons and entities including Patrick Bush with respect to the above-captioned defendant properties.

Based on the government's Motion and Memorandum, it appears that copies of the Complaint for Forfeiture *In Rem* was served on all known interested parties. Notice of Complaint for Forfeiture *In Rem* has appeared in a newspaper of general circulation within the District of Utah, and no responsive pleading or answer has been filed in this action by any person or entity including Patrick Bush.

Having considered the Motion and Memorandum, and based on the records of the Court with plaintiff's Application for Default, the Court finds that:

1. Process was duly issued in this case and served upon all known interested parties.
2. Public Notice of the Complaint for Forfeiture *In Rem* appeared in a newspaper of general circulation.

3. No person or entity except Patrick Bush has filed a claim, answer, or other responsive pleading in defense of this action.

4. Patrick Bush has failed to file an answer or responsive pleading pursuant to 18 U.S.C. § 983(b)(4)(B).

Based on the above findings, and the Court being otherwise fully advised in the matter:

IT IS HEREBY ORDERED AND ADJUDGED that:

Default Judgment and Order of Forfeiture be entered and the same is entered in the above-captioned case against all persons and entities including Patrick Bush with respect to the defendant properties identified as:

- \$3,294.00 in U.S. Currency


The assets identified above are forfeited to the United States, with all right, title, and interest vested in the United States, and any interest of any person or entity in said assets is forever barred.

Dated this 11th day of September, 2006.

BY THE COURT:



PAUL G. CASSELL, Judge
United States District Court



U.S. District Judge

Kristopher S. Kaufman (10117)
TOMSIC & PECK ^{LLC}
136 East South Temple, Suite 800
Salt Lake City, Utah 84111
Telephone: (801) 532-1995

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

LOUEDA A. JENSEN,

Plaintiff,

v.

FOUNTAIN GREEN CITY, DEAN
HANSEN, SCOTT COLLARD, DAN
NAYLOR, LEWIS RASMUSSEN,
MICHAEL DRAPER, MARY GILGEN,
MAUREEN LUND, ROGER AAGARD,
and JEFF NIELSEN.

Defendants.

**SCHEDULING ORDER AND ORDER
VACATING HEARING**

Civil No. 2:05CV1070

Judge Dale A. Kimball

Magistrate Judge David Nuffer

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for November 8, 2006 at 2:30 p.m. is VACATED.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses: employment discrimination.

- | | | |
|----|--|-----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>09/01/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>09/11/06</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>10/11/06</u> |

2. DISCOVERY LIMITATIONS

- a. All discovery shall be made in accordance with the Federal Rules of Civil Procedure, unless otherwise agreed by the parties or ordered by the Court.

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES²

- | | | |
|----|--|-----------------|
| a. | Last Day to File Motion to Amend Pleadings | <u>05/11/07</u> |
| b. | Last Day to File Motion to Add Parties | <u>05/11/07</u> |

4. RULE 26(a)(2) REPORTS FROM EXPERTS³

- | | | |
|----|--|-----------------|
| a. | Reports from all parties' retained experts under Rule 26(a)(2) which shall be used to support any claim, counterclaim or cross-claim in this action, or which shall be used to defend against any claim, counterclaim or cross-claim in this action, shall be hand delivered to all parties. | <u>06/11/07</u> |
|----|--|-----------------|

b. Reports from all parties' retained experts under Rule 26(a)(2) which shall be used to rebut any matter contained in an expert report submitted under paragraph 4.a. shall be hand delivered to all parties. 07/11/07

5. OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery	<u>05/11/07</u>
Expert discovery	<u>08/13/07</u>

b. Deadline for filing dispositive or potentially dispositive motions and Daubert motions 08/30/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation No

b. Referral to Court-Annexed Arbitration No

c. Evaluate case for Settlement/ADR on 05/11/07

d. Settlement probability: Unknown

7. TRIAL AND PREPARATION FOR TRIAL: *Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.*

a.	Rule 26(a)(3) Pretrial Disclosures ⁴	
	Plaintiff	12/17/07
	Defendant	12/31/07
b.	Objections to Rule 26(a)(3) Disclosures	
	(if different than 14 days provided in Rule)	
		DATE
c.	Special Attorney Conference ⁵ on or before	1/14/08
d.	Settlement Conference ⁶ on or before	1/14/08
e.	Final Pretrial Conference	2:30 pm 1/28/08

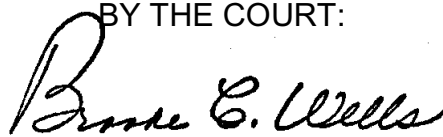
f.	Trial	<u>Length</u>	<u>Time</u>	<u>Date</u>
i.	Bench Trial			
ii.	Jury Trial	<u>2 days</u>	<u>8:30</u>	<u>2/11/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13th day of September 2006

BY THE COURT:



U.S. Magistrate Judge

APPROVED AS TO FORM:

TOMSIC & PECK

BLAISDELL & CHURCH

/s/ Kristopher S. Kaufman
Kristopher S. Kaufman
Attorney for plaintiff

David L. Church
David L. Church
Attorney for defendants

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636

(b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. The identity of experts and the subject of their testimony shall be disclosed as soon as an expert is retained or, in the case of an employee-expert, as soon as directed to prepare a report.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Jensen v. Fountain Green 205cv1070 DAK mjw.wpd

FILED
U.S. DISTRICT COURT

2006 SEP 11 P 1:47

DISTRICT OF UTAH

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

BY: CLERK

Sara DeRyke
Plaintiff

v.

Janssen Pharmaceutica Products, LP, et al.
Defendants

:
:
:
: ORDER FOR PRO HAC VICE ADMISSION
:
:
:

: Case Number 2:05-cv-1076 DB

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of D.U. Civ R 83-1.1(d), the motion for the admission pro hac vice of Michaels C. Zellers in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 17th day of September, 2006.

Dee Benson
U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:13

JULIE GEORGE (6231)
Attorney for Defendant
29 South State Street, Suite 007
P.O. Box 112338
Salt Lake City, UT 84147-0338
Telephone: (801) 322-1751
Facsimile: (801) 359-4258

IN THE UNITED STATES DISTRICT COURT
STATE OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,)	
)	ORDER GRANTING DEFENSE
Plaintiff,)	MOTION TO CONTINUE SENTENCE
)	
vs.)	Case No. 2:06-CR-00032-DB
)	
CHERI IMEG,)	
)	JUDGE DEE BENSON
Defendant.)	

Based on the Motion of defense counsel, the stipulation of the government and good cause appearing, the Court hereby;

Orders that the Sentence Hearing in this case shall be continued one month and held on 10/10/06 @ 3:30 pm. The Court also finds that pursuant to 18 U.S.C. §3161 et seq. the period of delay in this case is necessary in that the ends of justice are served by taking such action and outweigh the best interest of the public or the defendant in a speedy resolution to the matter by way of an earlier sentence.

Date this 12 day of September, 2006.



HONORABLE JUDGE DEE BENSON
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 7TH day of September, 2006, true and correct copy of the foregoing was sent via electronic "ECF" mail to the following:

SPECIAL ASSISTANT UNITED STATES ATTORNEY
LESHIA M. LEE-DIXON
185 SOUTH STATE, SUITE 400
SALT LAKE CITY, UTAH 84101

____S/ JULIE GEORGE_____

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Lawrence Kim Ogden

FILED
U.S. DISTRICT COURT
AMENDED JUDGMENT IN A CRIMINAL CASE

2006 SEP 10 Case Number: BUTX 2:06CR000033-001

USM Number: 07345-081

BENJAMIN HAMILTON

Defendant's Attorney

Date of Original Judgment: 8/28/2006

(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

BY:

DEPUTY CLERK

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ☒ pleaded guilty to count(s) One of the Indictment
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(a)	Bank Robbery		1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

U.S. District Judge

Name of Judge

Title of Judge

9-11-2006

Date

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

Judgment — Page 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

118 Months, which shall run concurrent with previously imposed Utah State Case 861904913

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at a medical facility, where his mental and physical disabilities can be attended to.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

Judgment—Page 3 of 7

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of
36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.

DEFENDANT: Lawrence Kim Ogden

Judgment—Page 4 of 7

CASE NUMBER: DUTX 2:06CR000033-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug testing as directed by the probation office.
2. The defendant shall participate in drug abuse treatment under a copayment plan as directed by the United States Probation Office.

DEFENDANT: Lawrence Kim Ogden

CASE NUMBER: DUTX 2:06CR000033-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Zions Bank			
Attn: Corporate Security			
1340 South Foothill Drive			
Salt Lake City, UT 84108	\$2,640.00	\$2,640.00	100%

TOTALS	\$ _____	\$ _____
---------------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☒ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Lawrence Kim Ogden
CASE NUMBER: DUTX 2:06CR000033-001

Judgment — Page 6 of 7

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☒ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of \$ 10.00 over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
- SPA of \$100 shall be due and payable immediately;
Restitution of \$2640.00 is due immediately and shall be payable at a minimum rate of \$10.00 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

The Statement of Reasons
filed with the original J&C
has not been altered and so
will not be re-submitted with
this amended J&C

FILED
U.S. DISTRICT COURT

RECEIVED

SEP 07 2006

2006 SEP 13 P 12:12 THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

OFFICE OF
JUDGE TENA CAMPBELL

DISTRICT OF UTAH, CENTRAL DIVISION

BY: REPUTY CLERK

UNITED STATES OF AMERICA,

Case No. 2:06-CR-268 TS TC

Plaintiff,

vs.

ORDER FOR EXTENSION OF TIME TO
FILE REPLY


HARRY MICHAEL SACHS

Defendant.

Judge Tena Campbell

Based on the government's motion, and for reasons set forth therein, this Court extends the
deadline for the government's reply to 9/15/2006, 2006.

BY THE COURT:


Hon. Judge Tena Campbell

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:13

DISTRICT OF UTAH

CLERK

RONALD J. YENGICH (#3580)
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	ORDER CONTINUING
)	JURY TRIAL
Plaintiff,)	
)	
v.)	
)	Case No. 2:06 CR 342
SE-HOURT LIM,)	
)	Honorable Dee Benson
Defendant.)	

Based upon the motion and stipulation of counsel and for good cause shown;

THIS COURT HEREBY FINDS that the ends of justice served in granting a continuance in the above-entitled matter outweigh the best interests of the public and the defendants in a speedy trial. The Court further finds that the parties have, despite the exercise, of due diligence, not yet completed plea negotiations.

Pursuant to Title 18, § 3161(8)(A) and (B)(iv) of the Speedy Trial Act, the Jury Trial date in this matter, currently set for September 25th and 26th, 2006, is hereby continued. The period of delay resulting from this continuance is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial be continued to the 27 day of Nov, 2006, at the hour of 8:30 a.m/p.m., before Judge Benson.

SIGNED BY MY HAND this 12 day of September, 2006.

BY THE COURT:


HONORABLE DEE BENSON
United States District Court Judge

UNITED STATES DISTRICT COURT

FILED
DISTRICT COURT

Central Division

District of

Utah SEP 5 P 2:31

UNITED STATES OF AMERICA

V.

Pedro Meza-Roman

JUDGMENT IN A CRIMINAL CASE

DISTRICT OF UTAH

Case Number: DUTX206CR000389-001

USM Number: 13665-081

Sam Meziani, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC Sec 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/30/2006

Date of Imposition of Judgment

Signature of Judge

J. Thomas Greene

Name of Judge

U.S. District Judge

Title of Judge

Date

September 5, 2006

DEFENDANT: Pedro Meza-Roman
CASE NUMBER: DUTX206CR000389-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in an appropriate level facility in southern Arizona.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Pedro Meza-Roman

CASE NUMBER: DUTX206CR000389-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Pedro Meza-Roman
CASE NUMBER: DUTX206CR000389-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Pedro Meza-Roman
CASE NUMBER: DUTX206CR000389-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ 0.00	\$ 0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Pedro Meza-Roman
CASE NUMBER: DUTX206CR000389-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$100 is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

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Attorney at Law
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Telephone: (801) 364-6474
Facsimile: (801) 364-5014

FILED
U.S. DISTRICT COURT
2006 SEP 12 P 3:13
CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL J. BOYD,

Defendant.

:

:

:

:

:

FINDINGS AND ORDER

Case No. 2:06 CR 464 DB

Based on motion of the defendant and stipulation of the plaintiff, the court enters the following:

FINDINGS

1. In order to adequately prepare the case, counsel needs to have psychological testing completed on the defendant.
2. It is unreasonable to expect that such testing can be completed within the time limits established by 18 U.S.C. §3161.
3. The ends of justice in granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

ORDER

It is hereby ORDERED that the trial date of September, 18, 2006, be stricken and the trial rescheduled to 11/13/06.

It is further ORDERED that the time between September 18, 2006, and the next trial date be excluded from the computation for the time for trial as described in 18 U.S.C. §3161.

DATED this ____ day of September, 2006.



TENA CAMPBELL
United States District Court Judge

CERTIFICATE OF SERVICES

I hereby certify that on this 5th day of September, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following:

Karin Fojtik (E-Filer)
karin.fojtik@usdoj.gov janet.larson@usdoj.gov

/s/ LaRane Kasteler

FILED
U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT

2006 SEP 12 A 9:52
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY M. WILLIAMS,

Defendant.

BY: _____
DEPUTY CLERK

**ORDER CONTINUING MOTION
CUT-OFF DATE**

Case No. 2:06CR507 TS

Based on the motion filed by the defendant and good cause appearing,

IT IS HEREBY ORDERED the motion cut-off date be continued until October

6th

DATED this 11th day of September, 2006.

BY THE COURT:



Ted Stewart
United States District Court Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

UNITED STATES OF AMERICA
Plaintiff,

MICHAEL SWATSCHENO
Defendant

:
:
:
:
:
:
:

**ORDER FOR SUBSTANCE ABUSE
EVALUATION**

Docket No. 2:06-CR-625-001 TC

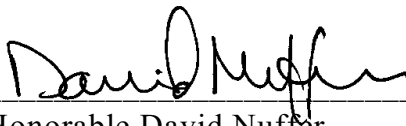
For the purpose of assisting the Court, a substance abuse evaluation is necessary to assess the defendant's current status for consideration for pretrial release and/or treatment while on pretrial release.

IT IS ORDERED that the defendant submit to a substance abuse evaluation before a qualified practitioner, in order to provide further information to the Court.

IT IS FURTHER ORDERED that the United States Pretrial Services Agency, pursuant to 18 USC § 3154(4), (7), and (12), pay all reasonable and necessary expenses from funds allocated for such purposes.

DATED this 12th day of September, 2006.

BY THE COURT:



Honorable David Nuffer
United States Magistrate Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MESHWERKS, INC., a Utah corporation,
Plaintiff,

vs.

TOYOTA MOTOR SALES U.S.A., INC., a
California corporation, GRACE & WILD,
INC., d/b/a “DIVISION X,” a Michigan
corporation, 3D RECON, L.L.C., a Utah
limited liability company, SAATCHI &
SAATCHI NORTH AMERICA, INC., a
California corporation, and JOHN DOES 1-
10,
Defendants.

ORDER & MEMORANDUM DECISION

Case No. 2:06 CV 97

This motion raises the question of whether copyright law protects three-dimensional digital models of commercial products when the digital models are intended to resemble the commercial product as closely as possible. Plaintiff Meshwerks, Inc., was hired by Defendant Grace & Wild, Inc. to create digital models of several Toyota vehicles. After completing the project, Meshwerks obtained copyright registration certificates covering the models. Meshwerks contends that Defendants Toyota Motor Sales U.S.A., Inc., Grace & Wild, 3D Recon, L.L.C., and Saatchi & Saatchi North America, Inc. (collectively, the “Toyota Defendants”) violated Meshwerks’s copyright by impermissibly using the models that Meshwerks created. Meshwerks also alleges that Grace & Wild failed to fully pay Meshwerks for the digital modeling that it performed.

The Toyota Defendants have moved for summary judgment on Meshwerks's copyright infringement claims, asserting that the digital models created by Meshwerks are not copyrightable. Further, the Toyota Defendants argue that, should they succeed on their motion for summary judgment, the court should decline to exercise supplemental jurisdiction over Meshwerks's remaining state law claim for breach of contract. The court agrees with the Toyota Defendants' position and therefore grants the motion for summary judgment and declines to exercise supplemental jurisdiction over Meshwerks's breach of contract claim.

Background

As part of its advertising strategy, Toyota Motor Sales and its advertising agent, Saatchi & Saatchi sought out a company to create three-dimensional animated images of several Toyota vehicles. Toyota planned on using the models on the Internet and in several other types of promotional media. Saatchi & Saatchi contacted Grace & Wild and asked it to develop the images. Grace & Wild, in turn, hired Meshwerks to create three-dimensional digital models of the Toyota vehicles that would be used to create the final images.

The parties present different descriptions of the digital-modeling process. The Toyota Defendants assert that the use of off-the-shelf computer software enables the quick creation of product-accurate models. In contrast, Meshwerks claims that computer software is used to create an initial rough sketch of an object, but that "the skill and creativity of the graphic sculptor," who uses computer software as a tool, creates the final product. (Plf.'s Memo. in Opp'n to the Toyota Defs. Mot. for Part. Summ. J. ii (dkt. #19).)

Meshwerks began the modeling process by measuring the physical distance between designated points on each Toyota vehicle. To accomplish this task, Meshwerks placed tape in a grid pattern over each car and then, using an articulated arm measuring over six feet, marked

each point at which the tape intersected. The distance between the points of intersection was then measured and inputted into a computer. Using the measurements as a guide, the computer software then created lines that formed a rough digital representation of the vehicle, resembling a wireframe model.¹

According to Meshwerks, the individual creating the digital model must manipulate the data initially obtained from the vehicle measurements to effectively create the illusion of a three-dimensional image on a two-dimensional screen in the most efficient manner possible. Given the necessity of manipulating the data obtained through measurement alone, Meshwerks disputes the Toyota Defendants' characterization of the final digital models as absolutely product accurate. In fact, Meshwerks contends that truly product-accurate models would be worthless because they would not create the desired three-dimensional effect. In short, Meshwerks asserts that the modeling process is a creative one, and that the creative nature of the process is borne out by the fact that no two digital models of an object will be exactly alike.

After finishing the vehicle models, Meshwerks provided the digital files to Saatchi & Saatchi. Meshwerks also made a print-out of the data comprising each of the digital files and sought copyright protection of the material, claiming that the print-outs represented copyrightable non-dramatic literary works or computer programs. The United States Copyright Office issued copyright registration certificates to Meshwerks covering the submitted files.

Meshwerks's copyright infringement claim is based on Meshwerks's belief that the digital models it created have been distributed among the Toyota Defendants and that those

¹According to Meshwerks, some components of the vehicles, such as the vehicles' headlights, could not be measured. Meshwerks took photographs of those components and then, using the photographs for reference, created the wireframe model of the components from scratch.

models have been used repeatedly without Meshwerks's permission. The Toyota Defendants claim that summary judgment on Meshwerks's copyright infringement claims is warranted because the digital models are not entitled to copyright protection.

Summary Judgment Standard

Federal Rule of Civil Procedure 56 permits the entry of summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986); Adler v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The court must "examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." Applied Genetics Int'l, Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990).

The parties do not truly dispute the material facts underlying Meshwerks's copyright claim. Rather, the parties dispute the manner in which those facts are characterized. The only disagreement between the parties concerns whether the process of creating the digital models is dominated by creativity or technical know-how. But even the Toyota Defendants acknowledge that the modeling process is not entirely mechanical in nature. (See Reply Memo. in Supp. of Defs. Mot. for Part. Summ. J. 11 (dkt. #25) ("In a manner of speaking, it took 'creative judgments' to decide how best to depict the three-dimensional Vehicle in a two-dimensional display.")) The parties' disagreement concerning the accurate characterization of the modeling process does not preclude the entry of summary judgment on Meshwerks's copyright infringement claim. This is so because, even if Meshwerks's characterization of the modeling

process is accepted as accurate, the digital models are nevertheless not copyrightable.²

Accordingly this matter can be resolved on summary judgment. See Magic Mktg., Inc. v. Mailing Servs. of Pittsburgh, Inc., 634 F. Supp. 769 (W.D. Pa. 1986) (“The issue of copyrightability is typically resolved by a motion for summary judgment.”); cf. Sem-Torq, Inc. v. K Mart Corp., 936 F.2d 851, 853 (6th Cir. 1991) (“Copyrightability is often resolved on summary judgment.”).

Analysis

I. Copyright Infringement

The Copyright Act provides that “[c]opyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. § 102(a). “To qualify for copyright protection, a work must be original to the author.” Feist Pub., Inc. v. Rural Tele. Serv. Co., 499 U.S. 340, 345 (1991) (citing Harper & Row, Pubs., Inc. v. Nat. Enterps., 471 U.S. 539, 547-49 (1985)). In fact, originality is “[t]he sine qua non of copyright.” Id. The requirement of originality is met if the author created the work and the creation involved a creative component. See id. (“Original . . . means only that the work was independently created by the author . . . and . . . possesses at least some minimal degree of creativity.”). With regard to the presence of creativity, the United States Supreme Court has stated: “To be sure, the requisite level of creativity is extremely low; even a

²Meshwerks filed a motion to strike portions of the declaration of Brent Feeman, which was submitted by the Toyota Defendants in support of their motion for partial summary judgment. In an apparent attempt to address the concerns raised by Meshwerks, the Toyota Defendants responded by submitting a supplemental declaration of Mr. Feeman. But Meshwerks contends that the supplemental declaration suffers from deficiencies similar to those present in Mr. Feeman’s first declaration. Nevertheless, because the court does not rely on the paragraphs of Mr. Feeman’s declaration that Meshwerks seeks to strike and because the court adopts Meshwerks’s recitation and characterization of the digital modeling process, the motion to strike Mr. Feeman’s declaration is denied as moot.

slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, no matter how crude, humble, or obvious it might be.” Id. (internal quotation omitted).

The parties devote some time in their briefs to the presence of a presumption of copyright protection flowing from the registration certificates obtained by Meshwerks. See Grundberg v. Upjohn Co., 137 F.R.D. 372, 382 (D. Utah 1991) (“The registration certificate is prima facie evidence of copyright validity.”) The effect of the presumption in this case is not in dispute. The Toyota Defendants have the burden of proving that the digital models created by Meshwerks are not copyrightable. See id. (“[T]he presumption is not absolute: ‘possession of a registration certificate creates a rebuttable presumption that the work in question is copyrightable.’” (quoting Whimsicality Inc. v. Rubie’s Costume Co., 891 F.2d 452, 455 (2d Cir. 1989))). The Toyota Defendants attack the copyrightability of the Meshwerks models on creativity grounds, contending that the models fail to “make the grade,” because they do not exhibit the “creative spark” that serves as the necessary predicate for copyright protection, Feist, 499 U.S. at 345.

In support of their position, the Toyota Defendants cite ATC Distribution Group, Inc. v. Whatever It Takes Transmissions & Parts, Inc., 402 F.3d 700 (6th Cir. 2005), in which an auto parts dealer claimed that a competitor copied illustrations used in an auto parts catalog. See id. at 702-03, 712. The illustrations in ATC Distribution Group were “hand-drawn sketches of transmissions parts,” that were originally “copied from photographs cut out of competitors’ catalogs.” Id. In reaching the conclusion that the hand-drawn illustrations were not entitled to copyright protection, the Sixth Circuit focused on the lack of creative intent, stating that “[t]he illustrations were intended to be as accurate as possible in reproducing the parts shown in the

photographs on which they were based, a form of slavish copying that is the antithesis of originality.” Id. (citing J. Thomas Distribs. v. Greenline Distribs., 100 F.3d 956 (6th Cir. 1996), available at No. 95-2100, 1996 WL 636138 at *1 (6th Cir. Oct. 31, 1996) (unpublished opinion) (“Plaintiff’s spindle bearing was drawn with the express intention of duplicating on paper the appearance of an actual spindle bearing. Its reproduction involved absolutely no creative spark whatsoever.”)).

Meshwerks contends that its modeling process involved much more than mere “slavish copying,” id. Instead, Meshwerk analogizes its process to that undertaken by commercial photographers. In particular, Meshwerks relies on SHL Imaging, Inc. v. Artisan House, Inc., 117 F. Supp. 2d 301 (S.D.N.Y. 2000), in which the court held that product photographs of mirrored picture frames were entitled to copyright protection, id. at 311.

The court in SHL Imaging, Inc. began its analysis with the acknowledgment that “[t]here is no uniform test to determine the copyrightability of photographs.” Id. at 309-10. Citing the “almost limitless creative potential” offered by the medium of photography, the court commented that “[t]he elements that combine to satisfy Feist’s minimal ‘spark of creativity’ standard will necessarily vary depending on the photographer’s creative choices.” SHL Imaging, Inc., 117 F. Supp. 2d at 310. The court went on to state that “[t]he cumulative impact of these technical and artistic choices becomes manifest in renowned portraits, such as ‘Oscar Wilde 18.’ The measure of originality becomes more difficult to gauge as one moves from sublime expression to simple reproduction.” Id.

The SHL Imaging, Inc. court viewed the product photographs that were the subject of the parties’ dispute as less than sublime expression, but much more than simple reproduction. See id. at 311 (“While Lindner’s works may not be as creative as a portrait by Dianne Arbus, they

show artistic judgment and therefore meet the Feist standard.”). In reaching its conclusion that the product photographs were protected by copyright, the court focused on the artistic choices made by the photographer. See id. at 311 (“What makes plaintiff’s photographs original is the totality of the precise lighting selection, angle of the camera, lens and filter selection.”).

Nevertheless, the court noted that the copyright protection afforded to the photographs was narrow, stating that “[p]laintiff cannot prevent others from photographing the same frames, or using the same lighting techniques and blue sky reflection in the mirrors[;] . . . [p]ractically, the plaintiff’s works are only protected from verbatim copying.” Id.

The models created by Meshwerks are more analogous to the illustrations in ATD Distribution Group than to the photographs in SHL Imaging, Inc. The critical distinction between the present case and SHL Imaging, Inc. is the lack of a creative recasting of the Toyota vehicles. The photographer in SHL Imaging, Inc. used his camera to introduce new creative elements that elevated his photographs beyond mere replication. The illustrators in ATC Distribution Group, on the other hand, utilized their skill to reproduce, as accurately as possible, the auto parts they were attempting to depict. Similarly, in this case, Meshwerks’s intent was to replicate, as exactly as possible, the image of certain Toyota vehicles. Although the tools used by the illustrators in ATC Distribution Group vary from the digital-modeling tools used by Meshwerks, the endeavor was identical: product-accurate representation without the introduction of new creative elements.

Todd v. Montana Silversmiths, Inc., 379 F. Supp. 2d 1110 (D. Colo. 2005), provides a helpful example of the distinction drawn in copyright law between skilled craft and creative, protectable, works. In Todd, a jewelry maker claimed that a competitor had impermissibly copied jewelry that the plaintiff had designed to resemble barbed wire. Id. at 1111. The court

concluded that the plaintiff's design was not protected by copyright law. See id. at 1113-14. According to the Todd court, "[w]hile Plaintiff is no doubt a skilled artist capable of making jewelry with a certain aesthetic appeal, she has failed to show what copyrightable features she has added to her work to separate it from ordinary public domain barbed-wire." Id. at 1113. The court, while acknowledging the skill and judgment involved in the design process, nevertheless declined to extend copyright protection to the unoriginal result of that process, stating that "[t]he fact remains that for all her aesthetic choices, the final arrangement of the elements in her jewelry still corresponds to the arrangement of public domain barbed-wire." Id.

Like the jeweler in Todd, Meshwerks no doubt made many judgments that required both skill and technical know-how. Those judgments may have even involved "creativity," as that word is commonly used. But the digital models created by Meshwerks are not original. Just as the jewelry in Todd ultimately corresponded to common barbed-wire, the digital models created by Meshwerks correspond to the Toyota vehicles they were intended to represent. Accordingly, Meshwerks's models are not protected by copyright law and the Toyota Defendants are entitled to summary judgment on Meshwerks's copyright claims.

II. State Law Claims

28 U.S.C. § 1367(c) allows federal district courts to decline exercising jurisdiction over state law claims when "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). In this case, the only cause of action alleged by Meshwerks that is not dependent on federal copyright law is a breach of contract claim against Grace & Wild. Meshwerks's complaint does not allege that this court has original jurisdiction over that contract claim. Given the court's ruling on Meshwerks's copyright claims, the court

declines to exercise supplemental jurisdiction over Meshwerks's contract claim. Accordingly, Meshwerks's contract claim is dismissed.

Conclusion

Although a great deal of skill and effort was involved in the creation of Meshwerks's three-dimensional digital models, those models do not meet the originality requirement established by copyright law. Accordingly, the models are not entitled to copyright protection. As a result, the Toyota Defendants are entitled to summary judgment on Meshwerks's copyright claims. Further, the court declines to exercise supplemental jurisdiction over Meshwerks's breach of contract claim and that claim is therefore dismissed.

For the foregoing reasons, the Toyota Defendants' Motion for Partial Summary Judgment and Dismissal of Remaining Claim (dkt. #11) is GRANTED and Plaintiff's Motion to Strike Feeman Declaration (dkt. #17) is DENIED as moot.

DATED this 12th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

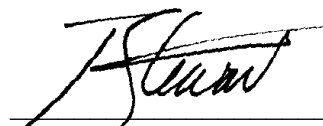
<p>MICHAEL V. LUJAN, Plaintiff,</p> <p>vs.</p> <p>RUTH H. BIENZ, et al., Defendants.</p>	<p>ORDER DISMISSING CASE WITHOUT PREJUDICE</p> <p>Case No. 2:06-CV-199 TS</p>
--	---

On July 28, 2006, this Court directed Plaintiff to effect service of the summons and Complaint upon Defendants within thirty days. This Court notified Plaintiff that, pursuant to Fed. R. Civ. P. 4(m), Plaintiff's failure to do so would result in dismissal of the Complaint without prejudice. Plaintiff has not effected service of the summons and Complaint upon Defendants. It is therefore

ORDERED that Plaintiff's case is DISMISSED without prejudice. The clerk of the court is directed to close the case.

DATED September 12, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

TED STEWART
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

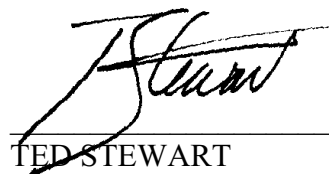
KRISTIE PACE, Plaintiff, vs. ST. GEORGE CITY POLICE DEPARTMENT, et al., Defendants.	ORDER DISMISSING CASE WITHOUT PREJUDICE Case No. 2:06-CV-217 TS
--	---

On July 28, 2006, this Court directed Plaintiff to effect service of the summons and Complaint upon Defendants within thirty days. This Court notified Plaintiff that, pursuant to Fed. R. Civ. P. 4(m), Plaintiff's failure to do so would result in dismissal of the Complaint without prejudice. Plaintiff has not effected service of the summons and Complaint upon Defendants. It is therefore

ORDERED that Plaintiff's case is DISMISSED without prejudice. The clerk of the court is directed to close the case.

DATED September 12, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 SEP 12 P 3:13

JAMES MORTON, as Trustee of the JAMES
E. MORTON LIVING TRUST

Plaintiff

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED and PRESIDIO
CAPITAL ADVISORS, LLC,

Defendants.

ORDER

Case No. 2:06 CV 236 DB
Judge Dee Benson

Defendants Presidio Capital Advisors and Merrill Lynch move to compel arbitration of Plaintiff's claims against both defendants and, in the alternative, to stay the litigation pending completion of arbitration. Having considered the parties' arguments and the relevant law, the Court DENIES the motion to compel arbitration with respect to Presidio, GRANTS the motion to compel in regard to Merrill Lynch, and DENIES the motion to stay the litigation.

Plaintiff James Morton opened a brokerage account with Merrill Lynch in May 2005 and executed a standard agreement which included a clause requiring him to submit to arbitration any claims against Merrill Lynch arising out of his account. Mr. Morton agreed

that all controversies that may arise between us shall be determined by arbitration. Such controversies include, but are not limited to, those involving any transaction in any of your accounts with Merrill Lynch, or the construction, performance or breach of any agreement between us.

Exh. B to Dec. of Deborah Corrigan, Dkt. No. 4 at 16. Mr. Morton subsequently entered into an agreement with Presidio Capital Advisors whereby Presidio served as his investment advisor regarding his Merrill Lynch account. The agreement between Mr. Morton and Presidio did not include an arbitration agreement.

Mr. Morton now complains of an allegedly unauthorized sale of stock from his Merrill Lynch account for which he claims both Merrill Lynch and Presidio bear some responsibility. Mr. Morton concedes that his claims against Merrill Lynch must be submitted to arbitration but resists Presidio's attempts to claim the benefit of his arbitration agreement with Merrill Lynch and force him to arbitrate all claims.

Presidio contends that Mr. Morton's claims against Presidio must be arbitrated because his claim against Presidio falls within the scope of his arbitration agreement with Merrill Lynch and because Mr. Morton is equitably estopped from litigating, rather than arbitrating, his claims against Presidio. Neither argument has merit. The arbitration agreement requires submission only of claims "between us," i.e. Merrill Lynch and Mr. Morton, to arbitration. While Presidio focuses on the fact that the agreement provides for arbitration of any transaction involving Merrill Lynch accounts, this provision serves to clarify the kinds of claims "between us" that must be arbitrated, and is not an enforceable contract between Mr. Morton and any third party in any way connected with his Merrill Lynch accounts. If Presidio had wanted the benefit of an arbitration agreement with Mr. Morton, Presidio could have bargained for such an agreement. Having chosen not to do so, Presidio cannot derive the same benefit from an agreement to which it is not a signatory and which manifests no intent to include disputes between Mr. Morton and Presidio. *See O'Connor v. Lafferty & Co., Inc.*, 965 F.2d 893, 902 (10th Cir. 1992) (introducing broker could not enforce arbitration agreement between client and clearing broker: "If [the introducing broker] wanted [the client] to be bound to arbitrate with them, they could have easily executed their own agreement with her. . . In the absence of a valid agreement to arbitrate a party cannot be forced to submit her dispute to arbitration.") (citation omitted).

Presidio's equitable estoppel argument is no more successful, foundering on the absence of both legal and factual support. Presidio has failed to offer any case law binding on this Court adopting equitable estoppel as a basis for forcing a party to arbitrate a claim in the absence of any

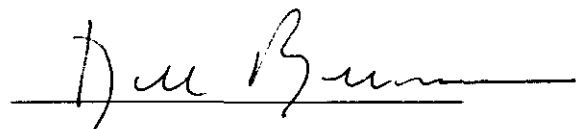
agreement to do so. Even if the theory had been accepted in this circuit, moreover, the factual record would be insufficiently developed to determine whether this means of compelling arbitration would be applicable here.

Since Mr. Morton concedes that his claims against Merrill Lynch must be arbitrated, Merrill Lynch argues that the litigation should be stayed pending the outcome of that arbitration. A stay would, in Merrill Lynch's view, promote judicial economy by resolving issues common to both the arbitrable and non-arbitrable claims. But aside from noting that a certain variety of arbitration award "might be entitled to preclusive effect," Merrill Lynch Rep. Br. at 4, neither Presidio nor Merrill Lynch has explained with sufficient precision the circumstances under which an arbitration award would determine the outcome of the litigation as well. And even if the results of the arbitration would have preclusive effect on the litigation, the record is insufficiently developed to permit the Court to determine that the issues of law and fact will be sufficiently similar in the arbitration and the litigation for the arbitration to be even relevant to the litigation. Under these circumstances, the claim that enhanced judicial efficiency would result from a stay is speculative at best.

Arbitration agreements are just that: agreements. Mr. Morton concedes that he agreed to arbitrate his claims against Merrill Lynch; Merrill Lynch's motion in this regard is accordingly GRANTED. Mr. Morton has not agreed, however, to submit his claims against Presidio to arbitration, and the motion to compel arbitration of those claims is DENIED. The motion to stay the litigation is DENIED.

IT IS SO ORDERED.

Dated this 12th day of September, 2006.

A handwritten signature in dark ink, appearing to read "Dee Benson", written over a horizontal line.

Dee Benson
United States District Court Judge

BRETT L. TOLMAN, United States Attorney (#8821)
CARLIE CHRISTENSEN, Assistant United States Attorney (#0633)
Office of the United States Attorney
185 South State Street, Suite #400
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

**IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION**

QUALITY QUICK STOP and	:	Civil No. 2:06 CV 00340 TC
NARENDRA NARKAR,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	SCHEDULING ORDER
	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	Hon. Tena Campbell Magistrate Judge Brooke C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

IT IS ORDERED that the Initial Pretrial Hearing set for November 8, 2006 at 2:30 p.m. is VACATED.

ALL TIMES 4:30 PM UNLESS INDICATED

1. PRELIMINARY MATTERS	<u>DATE</u>
-------------------------------	--------------------

Nature of claim(s) and any affirmative defenses is as follows: Plaintiffs claim that the decision of the Food and Nutrition Service of the Department of Agriculture disqualifying Quality Quick Stop from participating in the Food Stamp Program for a period of six months is arbitrary and capricious. Defendant claims that the six-month disqualification was appropriate because Quality Quick Stop's employees violated the Food Stamp Program on four different occasions.

- | | |
|---|------------|
| a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |

c.	Was 26(a)(1) initial disclosure completed?	<u>9/30/06</u>
2.	DISCOVERY LIMITATIONS	<u>NUMBER</u>
a.	Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for production by any Party to any Party	<u>25</u>
		<u>DATE</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a.	Last Day to File Motion to Amend Pleadings	<u>11/30/06</u>
b.	Last Day to File Motion to Add Parties	<u>11/30/06</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS³	
a.	Plaintiff	<u>N/A</u>
b.	Defendant	<u>N/A</u>
c.	Counter reports	<u>N/A</u>
5.	OTHER DEADLINES	
a.	Discovery to be completed by:	
	Fact discovery	<u>3/30/07</u>
	Expert discovery	<u>N/A</u>
b.	(optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)	<u>Continuous</u>
c.	Deadline for filing dispositive or potentially dispositive motions	<u>4/30/07</u>
6.	SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a.	Referral to Court-Annexed Mediation	<u>Yes/No</u> <u>No</u>
b.	Referral to Court-Annexed Arbitration	<u>Yes/No</u> <u>No</u>

- c. Evaluate case for Settlement/ADR on 3/30/07
- d. Settlement probability: Poor

7. TRIAL AND PREPARATION FOR TRIAL: *Specify # of days for Bench or Jury trial as appropriate. Shaded areas will be completed by the court.*

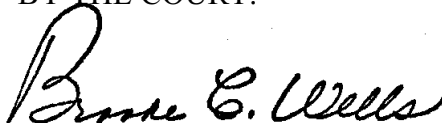
a.	Rule 26(a)(3) Pretrial Disclosures ⁴		
	Plaintiff		8/2/07
	Defendant		8/16/07
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		8/30/07
d.	Settlement Conference ⁶ on or before		8/30/07
e.	Final Pretrial Conference	3:00 pm	9/13/07
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	I. Bench Trial	<u>1 day</u>	<u>8:30</u> <u>10/5/07</u>
	ii. Jury Trial	<u>N/A</u>	

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 12th day of September 2006.

BY THE COURT:


 Hon. Brooke C. Wells
 U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Quality Quick Stop v. USA 206cv340 TC mjw.wpd

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

2006 SEP 12 P 2:37

DISTRICT OF UTAH, CENTRAL DIVISION

KENNETH R. MARTINEZ,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of the Social
Security Administration

Defendant.

CLERK OF COURT
REVISED SCHEDULING ORDER

Civil No. 2:06cv349

Judge Ted Stewart

The court establishes the following scheduling order in the above captioned case:

1. Plaintiff's motion for review of the Commissioner's decision and accompanying memorandum should be filed by October 6, 2006.
2. Defendant's memorandum in opposition should be filed by November 6, 2006.
3. Plaintiff may file a reply memorandum by November 20, 2006.

DATED this 11th day of September, 2006.

BY THE COURT


Honorable Ted Stewart

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Roger S. Bryner,

Plaintiff,

vs.

SL County et al,

Defendant.

SCHEDULING ORDER

Case No. 2:06CV377TC

District Judge Tena Campbell

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | | | |
|-----------|---|----------------------|
| 1. | PRELIMINARY MATTERS | <u>DATE</u> |
| | Nature of claim(s) and any affirmative defenses: | |
| | a. Was Rule 26(f)(1) Conference held? | <u>Yes</u> |
| | b. Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| | c. Was 26(a)(1) initial disclosure completed? | <u>10/2/06</u> |
|
 | | |
| 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
| | a. Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| | b. Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| | c. Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| | d. Maximum Interrogatories by any Party to any Party | <u>25</u> |
| | e. Maximum requests for admissions by any Party to any Party | <u>25</u> |
| | f. Maximum requests for production by any Party to any Party | |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>1/2/07</u>
b. Last Day to File Motion to Add Parties	<u>1/2/07</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>6/15/07</u>
b. Defendant	<u>8/1/07</u>
c. Counter Reports	
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>7/1/07</u>
Expert discovery	<u>9/1/07</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>10/1/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	<u>N</u>
b. Referral to Court-Annexed Arbitration	<u>N</u>
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiffs	12/27/07
Defendants	1/14/08
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

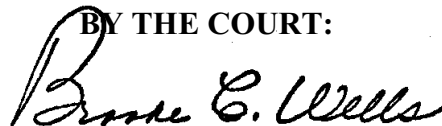
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		1/28/08
d.	Settlement Conference ⁶ on or before		
e.	Final Pretrial Conference	3:00 pm	2/11/08
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>3 Days</u>	<u>8:30 am</u> <u>3/3/08</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13 day of September, 2006.

BY THE COURT:



**Brooke C. Wells
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Bryner v SL County 2 06 cv 377 TC alp.wpd

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

JOHN A. CAMPBELL

Plaintiff,

v.

SOCIAL SECURITY ADMINISTRATION
et al.,

Defendants.

ORDER DENYING MOTION TO
APPOINT COUNSEL

Civil No. 2:06 cv 459 PGC

Judge Paul Cassell

Magistrate Judge Brooke C. Wells

Plaintiff, John Campbell *pro se*, has filed a Motion to Appoint Counsel.¹ As a civil litigant Mr. Campbell has no constitutional right to counsel.² Because Mr. Campbell has no right to counsel and fails to convince the court that there is sufficient merit to his claim the court DENIES Mr. Campbell's Motion for Appointment of Counsel.

[28 U.S.C. § 1915](#), which pertains to proceedings in forma pauperis, provides that "The court may request an attorney to represent any person unable to afford counsel."³ The appointment of counsel under this statute, however, is at the discretion of the court.⁴ "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."⁵ When deciding whether to appoint counsel, a court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of

¹ Docket no. 8.

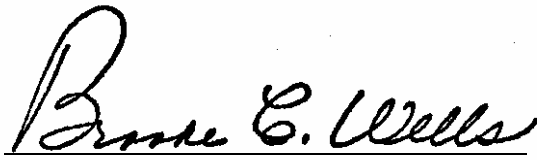
² See [Moomchi v. Univ. of N.M.](#), 1995 WL 736292, *3 (10th Cir. 1995) (unpublished); [Carper v. DeLand](#), 54 F.3d 613, 616 (10th Cir. 1995); [Durre v. Dempsey](#), 869 F.2d 543, 547 (10th Cir. 1989).

³ [28 U.S.C. § 1915\(e\)\(1\)](#).

⁴ See [McCarthy v. Weinberg](#), 753 F.2d 836, 838 (10th Cir. 1985).

the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"⁶ In considering these factors, the court concludes that (1) it is not clear yet whether Plaintiff has asserted a colorable claim; (2) the issues involved are not complex; and (3) Plaintiff is not incapacitated or otherwise unable to adequately pursue this matter. Therefore, the court DENIES Mr. Campbell's Motion for Appointment of Counsel. If this case is found to have merit, and if it appears that counsel will be needed, the court may ask an attorney to appear pro bono on his behalf.

DATED this 12th day of September, 2006.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first name "Brooke" is written with a large, stylized 'B' that loops around the first few letters. The last name "Wells" is written in a more standard cursive. The signature is positioned above a horizontal line.

Brooke C. Wells
United States Magistrate Judge

⁵ *Id.*

⁶ [*Rucks v. Boergermann*, 57 F.3d 978, 979 \(10th Cir. 1995\)](#) (quoting [*Williams v. Meese*, 926 F.2d 994, 996 \(10th Cir. 1991\)](#)).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2006 SEP 13 P 12:28

DISTRICT OF UTAH

BY: DEPUTY CLERK

JEROME VICTOR TRAFNY,

Plaintiff,

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:06 CV 578 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Chief Magistrate Judge Samuel Alba. Judge Alba is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 13th day of September, 2006.

BY THE COURT:



TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Salt Lake County,

Plaintiff,

vs.

EC Company et al,

Defendant.

SCHEDULING ORDER

Case No. 2:06CV582TC

District Judge Tena Campbell

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1. PRELIMINARY MATTERS

DATE

Nature of claim(s) and any affirmative defenses:

- | | | |
|----|--|----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>8/23/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>9/22/06</u> |

2. DISCOVERY LIMITATIONS

NUMBER

- | | | |
|----|--|-----------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | |
| f. | Maximum requests for production by any Party to any Party | |

	<u>DATE</u>
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²	
a. Last Day to File Motion to Amend Pleadings	<u>2/2/07</u>
b. Last Day to File Motion to Add Parties	<u>2/2/07</u>
4. RULE 26(a)(2) REPORTS FROM EXPERTS³	
a. Plaintiff	<u>4/6/07</u>
b. Defendant	<u>5/14/07</u>
c. Counter Reports	<u>6/1/07</u>
5. OTHER DEADLINES	
a. Discovery to be completed by:	
Fact discovery	<u>3/2/07</u>
Expert discovery	<u>6/1/07</u>
b. <i>(optional)</i> Final date for supplementation of disclosures and discovery under Rule 26 (e)	
c. Deadline for filing dispositive or potentially dispositive motions	<u>7/13/07</u>
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION	
a. Referral to Court-Annexed Mediation	
b. Referral to Court-Annexed Arbitration	
c. Evaluate case for Settlement/ADR on	
d. Settlement probability:	
7. TRIAL AND PREPARATION FOR TRIAL:	
a. Rule 26(a)(3) Pretrial Disclosures ⁴	
Plaintiffs	10/8/07
Defendants	10/22/07
b. Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)	

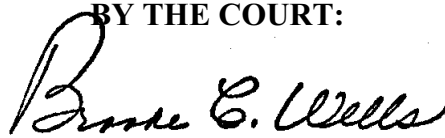
			<u>DATE</u>
c.	Special Attorney Conference ⁵ on or before		11/5/07
d.	Settlement Conference ⁶ on or before		
e.	Final Pretrial Conference	3:00 pm	11/20/07
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>3Days</u>	<u>8:30 am</u> <u>12/10/07</u>

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13 day of September, 2006.

BY THE COURT:



**Brooke C. Wells
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\MPT\2006\Salt Lake County v. EC TC alp.wpd

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
Central Division for the District of Utah

Christine Torres-Murphy,

Plaintiff,

vs.

Northface University LLC n/k/a
Neumont University,

Defendant.

SCHEDULING ORDER

Case No. 2:06CV625TC

District Judge Tena Campbell

Magistrate Judge

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

This order vacates hearing date set for 11/8/06 at 2:30 p.m.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. | PRELIMINARY MATTERS | <u>DATE</u> |
|-----------|---|--------------------|
| | Nature of claim(s) and any affirmative defenses: | |
| a. | Was Rule 26(f)(1) Conference held? | <u>8/30/06</u> |
| b. | Has Attorney Planning Meeting Form been submitted? | <u>Yes</u> |
| c. | Was 26(a)(1) initial disclosure completed? | <u>9/15/06</u> |
-
- | 2. | DISCOVERY LIMITATIONS | <u>NUMBER</u> |
|-----------|---|------------------------|
| a. | Maximum Number of Depositions by Plaintiff(s) | <u>10</u> |
| b. | Maximum Number of Depositions by Defendant(s) | <u>10</u> |
| c. | Maximum Number of Hours for Each Deposition
(unless extended by agreement of parties) | <u>7</u> |
| d. | Maximum Interrogatories by any Party to any Party | <u>25</u> |
| e. | Maximum requests for admissions by any Party to any Party | <u>no stated limit</u> |

- f. Maximum requests for production by any Party to any Party no stated limit
DATE
3. AMENDMENT OF PLEADINGS/ADDING PARTIES²
- a. Last Day to File Motion to Amend Pleadings 1/8/07
- b. Last Day to File Motion to Add Parties 1/8/07
4. RULE 26(a)(2) REPORTS FROM EXPERTS³
- a. Plaintiff 4/13/07
- b. Defendant 5/11/07
- c. Counter Reports 5/25/07
5. OTHER DEADLINES
- a. Discovery to be completed by:
- Fact discovery 3/30/07
- Expert discovery 6/8/07
- b. (optional) Final date for supplementation of disclosures and discovery under Rule 26 (e)
- c. Deadline for filing dispositive or potentially dispositive motions 7/13/07
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION
- a. Referral to Court-Annexed Mediation N
- b. Referral to Court-Annexed Arbitration N
- c. Evaluate case for Settlement/ADR on N/A
- d. Settlement probability:
7. TRIAL AND PREPARATION FOR TRIAL:
- a. Rule 26(a)(3) Pretrial Disclosures⁴
- Plaintiffs **11/7/07**
- Defendants **11/21/07**

b. Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule)

DATE

c. Special Attorney Conference⁵ on or before **12/06/07**

d. Settlement Conference⁶ on or before

e. Final Pretrial Conference **3:00 pm** **12/20/07**

f. Trial **Length** **Time** **Date**

i. Bench Trial

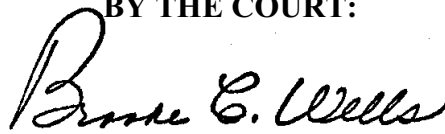
ii. Jury Trial **4Days** **8:30 am** **1/14/08**

8. OTHER MATTERS:

Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated this 13 day of September, 2006.

BY THE COURT:



Brooke C. Wells
U.S. Magistrate Judge

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Torres-Murphy v. Northface Univ. 206cv625 TC alp.wpd

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
DISTRICT COURT

2006 SEP 12 P 3:14

JOHN A. CAMPBELL,

Plaintiff,

vs.

SOCIAL SECURITY ADMINISTRATION,

Defendant.

ORDER OF CONSOLIDATION

Case No. 2:06-cv-0704-DB

Judge Dee Benson

Before the Court is *pro se* Plaintiff John A. Campbell's motion for consolidation. With Good cause appearing, the Court GRANTS Mr. Campbell's Motion.

IT IS SO ORDERED.

Dated this 12th day of September, 2006.



Dee Benson
United States District Judge

David K. Isom, (Utah Bar # 4773)
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The Tabor Center
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Denver, Colorado 80202
Telephone: (303) 572-6500
Facsimile: (303) 572-6540

FILED
DISTRICT COURT
2006 SEP 12 P 3:14

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

STORES ON LINE, INC., a Delaware corporation,

Plaintiffs,

v.

CAPTURES.COM, INC., a Washington corporation, and **WEB MARKETING SOURCE.COM**, a Washington corporation,

Defendants.

ORDER FOR PRO HAC VICE ADMISSION

No. 2:06-CV-00722 DB

Judge Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Gayle L. Strong in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 12th day of September, 2006.

Dee Benson
U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 12 P 3:14

CLERK OF UTAH

DEE BENSON
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ELOY RUVALCABA AND ARMANDO
RAMOS,

Plaintiffs,

v.

PREMIER MARBLE & GRANITE, INC.,
ANTIQUE STONEWORKS, INC., AND
DENNIS K. WAGNER,

Defendants.

**ORDER FOR PRO HAC VICE
ADMISSION**

C.A. No. 2:06-cv-00724

U.S. District Court Judge Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of
DUCiv R 83-1.1(d), the Motion for the Admission pro hac vice of David I. Moulton in the
United States District Court, District of Utah in the subject case is GRANTED.

Dated September 12th, 2006.


U.S. District Judge Dee Benson

DAVID E. YOCOM (#3581)
District Attorney for Salt Lake County
T. J. TSAKALOS (#3289) (ttsakalos@slco.org)
Deputy District Attorney
2001 South State Street, #S3700
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Telephone: (801) 468-3421
Facsimile: (801) 468-2622
Attorneys for Defendant Salt Lake County

FILED
U.S. DISTRICT COURT

2006 SEP 12 A 9:52

CLERK OF UTAH

CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

**BRADLEY SCOTT BROKAW, GORDON
BROKAW AND DEBBIE BROKAW,**
individuals,

Plaintiffs,

v.

SALT LAKE COUNTY, a political
subdivision of the State of Utah; **JORDAN
SCHOOL DISTRICT**, a political
subdivision of the State of Utah; **BEN
BOLDUC**, an individual; **SCOTT
TAGGART**, an individual; and **JOHN
DOES I-X**, individuals,

Defendants.

Case No. 2:06cv00729 TS

**ORDER GRANTING MOTION FOR
ENLARGEMENT OF TIME TO
ANSWER OR FILE RESPONSIVE
PLEADING TO COMPLAINT**

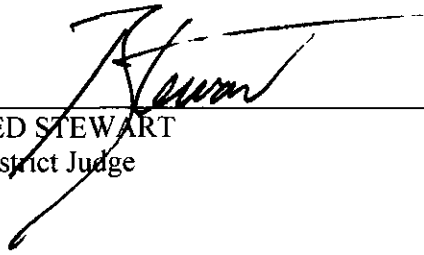
District Judge Ted Stewart

Defendant Salt Lake County's motion for a ten (10) day extension of time in which to file an answer or other responsive pleading to Plaintiffs' Complaint having come before the Court, and good cause appearing,

IT IS HEREBY ORDERED that the motion for enlargement of time is GRANTED, and that Defendant Salt Lake County shall file its answer or other responsive pleading to Plaintiffs' Complaint on or before September 21, 2006.

DATED this 1st day of September, 2006.

BY THE COURT:



TED STEWART
District Judge

Denver C. Snuffer, Jr. (3032)
Bret W. Reich (9542)
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, UT 84070
Telephone: (801) 576-1400
Facsimile: (801) 576-1960

Attorneys for Plaintiff

RECEIVED
U.S. DISTRICT COURT
SEP 13 2006
2006 SEP 13 P 12:30
OFFICE OF
JUDGE TENA CAMPBELL
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF UTAH

TERRY C. TURNER,

Plaintiff,

v.

GOLDEN EAGLE INTERNATIONAL, INC.,
KEVIN K. PFEFFER, H.E. DUNHAM,
WILLIAMS A. JACOBS,

Defendants.

**ORDER GRANTING
VOLUNTARY DISMISSAL OF
DEFENDANT GOLDEN EAGLE
INTERNATIONAL, INC.**

Civil No. 2:06-CV-00738 TC

Judge Tena Campbell

Based upon Plaintiff's Motion to voluntarily dismiss Defendant Golden Eagle International, Inc., the Court hereby grants the motion and dismisses Defendant Golden Eagle International, Inc. without prejudice.

DATED this 12 day of September, 2006.


Tena Campbell
United States District Court Judge

FILED
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Tharos Laboratories, a Utah Corporation
Plaintiff,

v.

Sepracor, Inc., a Massachusetts
Corporation
Defendant.

: ORDER FOR PRO HAC VICE ADMISSION

: Case Number 2:06-cv-00757-DB

: Honorable Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Rakesh M. Amin in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 8th day of September, 2006.



Judge Dee Benson
U.S. District Judge

RECEIVED CLERK

SEP 08 2006

U.S. DISTRICT COURT

FILED

U.S. DISTRICT COURT

2006 SEP 12 P 3:14

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Tharos Laboratories, a Utah Corporation
Plaintiff,

v.

Sepracor, Inc., a Massachusetts
Corporation

Defendant.

: ORDER FOR PRO HAC VICE ADMISSION

: Case Number 2:06-cv-00757-DB

: Honorable Dee Benson

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Avaneesh Marwaha in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this ^{12th} 8th day of September, 2006.



Judge Dee Benson
U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 13 P 12:28

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JANET JAMISON,

Plaintiff,

vs.

UTAH ANTI-DISCRIMINATION AND

Defendants.

ORDER OF REFERENCE

Civil No. 2:06 CV 763 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Brooke C. Wells. Judge Wells is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 13th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

2006 UTAH 12 P 3:16

John A. Campbell

Plaintiff

V.

Atlantic City, NJ

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Judge Dee Benson

DECK TYPE: Civil

DATE STAMP: 09/12/2006 @ 16:20:31

CASE NUMBER: 2:06CV00776 DB

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

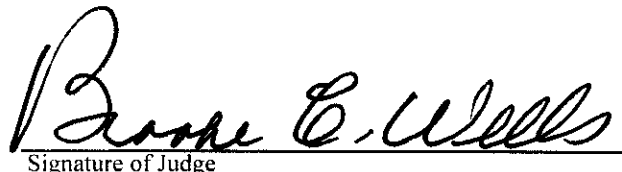
☐ DENIED, for the following reasons:

ENTER this

12

day of

September, 2006



Signature of Judge

Magistrate Judge Brooke C. Wells

Name and Title of Judge

SEP 12 2006

BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

United States District Court

Central Division for the District of Utah

Lisa Dickson

v.

Jo Anne B. Barnhart

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

DATE STAMP: 09/13/2006 @ 14:59:46
CASE NUMBER: 2:06mc777

Having considered the application to proceed without prepayment of fees under 28 U.S.C. 1915;

IT IS ORDERED that the application is:

- ☐ GRANTED.
- ☐ The clerk is directed to file the complaint.
- ☒ DENIED, for the following reasons:

Applicant has sufficient
funds.

ENTER this 12th day of Sept., 20 06.

Dee B. [Signature]
Signature of Judicial Officer

Name and Title of Judicial Officer

FILED
U.S. DISTRICT COURT
RECEIVED

2006 SEP 12 P 3:58 05 2006

DISTRICT OF UTAH
OFFICE OF
JUDGE TENA CAMPBELL
BY: _____
DEPUTY CLERK

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Telephone: (801) 363-4300
Facsimile: (801) 363-4378

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

GEORGE A. MATTHEWS,

Plaintiffs,

vs.

C.E.C. INDUSTRIES CORP., a Nevada
corporation,

Defendant.

ORDER re: RENEWAL OF JUDGMENT

Civil No. 2:96CV0729C

Judge Tena Campbell


Based on motion of Plaintiff George A. Matthews for renewal of judgment, and good cause being shown,

IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for renewal of judgment is granted.
2. The judgment previously entered on September 4, 1998 against defendant C.E.C. Industries Corp. in the principal amount of \$207,306.93 is hereby renewed in an amount equal to the principal amount plus interest through the date of its renewal at the statutory rate.

3. From date of entry of this Order, interest shall begin to accrue on the total amount of the judgment as renewed.

DATED this 12 day of September, 2006.



Honorable Tena Campbell
U.S. District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 11 A 10:55

SALT LAKE CITY, UTAH

BY: _____
DEPUTY CLERK

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Attorneys for Defendant
PHILIP MORRIS USA, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE STATE OF UTAH,

Plaintiff,

- vs -

R.J. REYNOLDS TOBACCO COMPANY, *et al.*,

Defendants.

**ORDER GRANTING DEFENDANT
ORIGINAL PARTICIPATING
MANUFACTURERS' MOTION FOR
LEAVE TO FILE OVERLENGTH REPLY
BRIEF IN FURTHER SUPPORT OF
THEIR MOTION TO COMPEL
ARBITRATION AND TO DENY OR, IN
THE ALTERNATIVE, STAY ALL
PROCEEDINGS ON THE STATE'S
MOTION TO ENFORCE THE MSA**

Case No. 2:96-CV-0829

Judge Dee V. Benson

WHEREAS the Court has reviewed Defendants R.J. Reynolds Tobacco Company, Philip Morris USA Inc., and Lorillard Tobacco Company (the "Original Participating Manufacturers" or "OPMs") Motion and Memorandum for Leave to File Overlength Reply Brief in Further Support of Their Motion to Compel Arbitration and to Deny, or, in the Alternative, Stay All Proceedings on the State's Motion to Enforce the MSA and finding good cause that justifies the need for an extension of the specified page limitations, enters the following ORDER:

The OPMs' Motion is GRANTED and the OPMs are given leave of Court to file an overlength Reply Brief in Further Support of Their Motion to Compel Arbitration and to Deny, or, in the Alternative, Stay All Proceedings on the State's Motion to Enforce the MSA, not to exceed 26 pages of argument.

DATED this 11th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson", written over a horizontal line.

Dee Benson
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2006, I served true and correct copies of the foregoing **ORDER GRANTING DEFENDANT ORIGINAL PARTICIPATING MANUFACTURERS' MOTION FOR LEAVE TO FILE OVERLENGTH REPLY BRIEF IN FURTHER SUPPORT OF THEIR MOTION TO COMPEL ARBITRATION AND TO DENY OR, IN THE ALTERNATIVE, STAY ALL PROCEEDINGS ON THE STATE'S MOTION TO ENFORCE THE MSA** upon the following counsel of record, in the manner indicated below:

☐ U.S. Mail
☒ E-Filer
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Raymond H. Hintze
Jerrold S. Jensen
Katharine H. Kinsman
Attorney Generals Office
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Salt Lake City, UT 84114
Attorney for Plaintiff

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MARTINEAU
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Salt Lake City, UT 84145-5000
Attorneys for B.A.T Industries, p.l.c.;
British-American Tobacco Holdings

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NESS, MOTLEY, LOADHOLT,
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 The American Tobacco Company,
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 Lorillard Tobacco Company, Loews
 Corporation and R.J.Reynolds
 Tobacco Co.

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/S/ Tyson B. Snow

RCS
9/5/06

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

Utah 2006 SEP 12 A 10:28

UNITED STATES OF AMERICA

V.

Gregory Checora

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX297CR000235-001

USM Number: 06047-081

Deirdre Gorman, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1 & 2 (in petition) of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1	Consumption of Alcohol	6/25/2006
2	Consumption of Alcohol	7/6/2006

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

8/31/2006

Defendant's Date of Birth: _____

Date of Imposition of Judgment

Defendant's Residence Address: _____

Signature of Judge

J. Thomas Greene

U.S. District Judge

Name of Judge

Title of Judge

Defendant's Mailing Address: _____

Date

September 11, 2006

DEFENDANT: Gregory Checora
CASE NUMBER: DUTX297CR000235-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

11 months, less credit for time served.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant participate in an alcohol abuse treatment program, as well as educational opportunities to obtain a GED while incarcerated. The court further recommends defendant be placed in a facility in Seattle, Washington and NOT in the facility in Leavenworth, Kansas.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Gregory Checora
CASE NUMBER: DUTX297CR000235-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Gregory Checora
CASE NUMBER: DUTX297CR000235-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
2. The defendant is to inform any employer or prospective employer of his current conviction and supervision status.
3. The defendant shall provide the probation office access to all requested financial information.
4. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
5. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
6. The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
7. The defendant shall be subject to a curfew and be restricted to his residence during the hours of 10:00 p.m. to 6:00 a.m.
8. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
9. The defendant shall reside in the Red Pine Treatment Center and successfully complete the first available session after release from custody.
10. The defendant shall pay restitution (see page 6 and attached orders) at a minimum rate of \$100 per month.

DEFENDANT: Gregory Checora
CASE NUMBER: DUTX297CR000235-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$	\$	\$ 10,165.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Utah State Crime Victim Reparations Office Attention: Trust Fund Case #105748 350 East 500 South, #200 Salt Lake City, Utah 84111	\$3,165.00	\$3,165.00	joint/several
Ute Indian Tribe P. O. Box 190 Fort Duchesne, Utah 84026	\$2,000.00	\$2,000.00	joint/several
Utah State DCFS 140 West 425 South (330-15) Roosevelt, Utah 84066	\$5,000.00	\$5,000.00	individual

TOTALS	\$	10,165.00	\$	10,165.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution or a fine more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Gregory Checora
CASE NUMBER: DUTX297CR000235-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$ 10,165.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

The court orders that the \$10,165.00 ordered on 10/27/1997 for the original offense be re-instated at the rate of \$100 per month. The court orders that Gregory Checora, Reuben Cuch, Jr., Warrenell Cuch, and Bobby Redcap pay restitution, jointly and severally, the sum of \$5,165. The court further orders the defendant and each of the co-defendants above named shall pay \$5000 each, a total of \$20,000, into a separate account maintained by the Division of Child and Family Services for the use and benefit of the children of Benji Murray, who was killed.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

Gregory Checora	97-CR-000235-001	\$5,165.00 (and \$5,000 individually)
Reuben Cuch	97-CR-000235-002	\$5,165.00 (and \$5,000 individually)
Warrenall Cuch	97-CR-000235-003	\$5,165.00 (and \$5,000 individually)

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY CHECORA, et. al.

Defendants.

ORDER

Case No. 2:97CR235 JTG

To: United States District Clerk of Court

The Ute Indian Tribe Accounting Office has been directed to divert \$100 per month, per defendant, for payment of restitution from the following individuals: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The disbursements are to be made to the Clerk of the Court for the United States District Court. The Clerk of the Court is first to disburse \$5,165.00, joint and severally from each defendant to the Ute Indian Tribe and the Utah State Office of Crime Victims.

After the \$5,165 has been paid, the said individuals are then obligated to pay \$5000 each to the Utah State Division of Family Services, for a total of \$20,000 to be paid by the four persons above named. These funds are for the use and benefit of the children of Benji Murray, namely Jeffrey Murray (a juvenile) and Jay Murray, age 18 or older. Previously it had been contemplated that an attorney, Mr. Martin Olsen, was going to operate on a pro bono

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GREGORY CHECORA, et. al.

Defendants.

ORDER

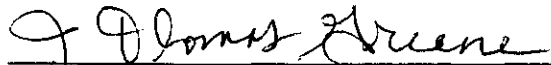
Case No. 2:97CR235 JTG

To: The Ute Indian Tribe Accounting Office

The Ute Indian Tribe Accounting Office is directed to withhold \$100 per month, per defendant, from the approximately \$200 each of the following defendants receive monthly in tribal dividend payments: Gregory Checora, Reuben Cuch Jr., Warrenell Cuch, and Bobby Redcap. The Office is to submit this amount monthly (a total of \$400 per month) to the United States District Court, Clerk of the Court, to be applied toward the restitution ordered in the above entitled case.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

capacity to distribute those funds. This has not been done and that designation is cancelled and no longer necessary. All disbursements will be made by the Clerk of the District Court. This Order supercedes all prior orders concerning restitution, including the Order of January 5, 2000.

IT IS SO ORDERED.

DATED this 31st day of August, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE